IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1069 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE MOHIT S. SHAH
AND
HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? **Yes**

2 To be referred to the Reporter or not ? **Yes**

3 Whether their Lordships wish to see the fair copy of the judgment ? **No**

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? **No**

5 Whether it is to be circulated to the civil judge ? To all Motor Accident Claims Tribunals **Yes**

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NEW INDIA ASSURANCE CO. LTD - Appellant(s)
Versus
TAKHUBEN RAGHABHAI (HEIR OF DECD. RAGHABHAI RAJABHAI) & 9 - Defendant(s)

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Appearance :
MR SHALIN N MEHTA with Ms Viraj Faujdar for Appellant-Insurance Co.,
Respondent Nos.1 to 9 served.
MR MRUGEN PUROHIT and MS AMRITA AJMERA for Intervener- Claimants

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CORAM : HONOURABLE MR.JUSTICE MOHIT .S. SHAH

and

HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 30/11/2006
ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE MOHIT .S. SHAH)

This appeal under Section 173 of the Motor Vehicles Act, 1988 (for brevity, the Act) is filed by the Insurance Company against the judgment and award dated 1.10.2005 of Motor Accident Claims Tribunal (Aux.), Rajkot in MAC Petition No. 446 of 2000 awarding compensation of Rs.6,28,400/- with proportionate costs and with interest at the rate of 9% per annum from the date of the claim petition till realization.

2. Though served, none appears for the respondents. Respondent Nos. 1 to 8 are the original claimants. Respondent No.9 was the driver of the vehicle involved in the accident. Respondent No.10 Company was the owner of the vehicle and when notice for final disposal of the appeal was sought to be served, the Company had already closed down. In view of the importance of the issues raised in the appeal, particularly the issues affecting claimants in the motor accident claim petitions, we permitted Mr Mrugen Purohit and Ms Amrita Ajmera to intervene and make submissions on behalf of the claimants in some other appeals filed by Insurance Companies against the awards made by the Claims Tribunals presided over by the same judicial officer – (Mr MS Shaikh) at Surendranagar, Rajkot or Junagadh.

2A. Although not very conventional, we would like to give an index to this judgment, since it runs into 80 pages with almost equal number of paragraphs :

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3. The above numbered claim petition was filed with the case that on 1.7.1999, Raghabhai Rajabhai was travelling in the matador (No.GJ-1X-7405) insured by the Insurance Company. The deceased had purchased grass and was travelling in the matador alongwith the grass. When the matador reached the place of occurrence at about 7.00 a.m., the driver was driving the matador at an excessive speed and steered the vehicle to save a cow on the road resulting into the matador going over the road. It turned turtle and ran into the pit nearby. The impact of the accident was so severe that the deceased died on the spot. The widow, minor children and the mother of the deceased filed the claim petition for compensation of Rs.4 lakhs.

4. On the question of negligence, the Tribunal relied on the decision of the Apex Court in Kaushnuma Begum vs. New India Assurance Co. Ltd., (2001) 2 SCC 9 and held as under :-

> "So far as the point of negligence is concerned, it is now well settled that it does not require to be established by the claimants; what is required to be established is that the accident occurred due to use of the vehicle because issue of negligence is not at all necessary for adjudication of the matter of compensation under the M.V. Act.
>
> It is to be noted that even in the M.V. Act itself under Sec.147 it is provided that insurer can be made liable in respect of the death or bodily injury "caused by or arising out of use of vehicle". Thus, the Legislature has intentionally not used the words "caused by wrongful act, neglect or default" and these words pertaining to negligence have been omitted from the Act itself. Hence, now "negligence" is not an essential requirement for obtaining just compensation for the accident arising out of use of a motor vehicle.
>
> Therefore, now-a-days, it is not necessary to establish the point of negligence and Tribunal is required only to find out whether injuries sustained by the claimant or death caused to the victim is the result of use of motor vehicles or not."

However, after making the above observations, the Tribunal examined the documentary and oral evidence on record on the issue of negligence and came to the independent conclusion that the accident was caused by the sole negligence of the matador driver.

5. On the question of quantum of compensation -

5.1 For the purpose of computing compensation for loss of dependency benefit, the Tribunal assessed the monthly income of the deceased at Rs.3000/-. Considering that the deceased had nine family members including himself, the Tribunal deducted one-fifth share towards personal expenses of the deceased and assessed the dependency benefit at Rs.2400/- per month. Considering that the deceased was aged 28 years (falling in the age group of 25 – 30 years), the Tribunal adopted the multiplier of 18 years on the basis of the Second Schedule to the Act. The compensation for dependency benefit was accordingly worked out at Rs.2400 x 12 = 28,800 x 18 years = Rs.5,18,400/-.

5.2 Thereafter the Tribunal awarded Rs.1,00,000/- as conventional amount for loss to estate and Rs.10,000/- for the funeral expenses; in all awarding total compensation of Rs.6,28,400/-.

5.3 Relying on the decision of the Kaushnuma Begam's case, the Tribunal also awarded interest at the rate of 9% per annum from the date of claim petition till realization.

5.4 Lastly, the Tribunal referred to the decision of this Court in Bai Damayanti Sharma, 1996 (2) GLR 418 for the purpose of giving directions regarding investment/disbursement of the award amount and provided for disbursement of Rs.1,00,000/- to the mother of the deceased to perform religious pilgrimage. The rest of the amount was ordered to be apportioned equally amongst the other claimants i.e. the widow and six children of the deceased, In case of widow, the Tribunal provided for disbursement of 50% of the amount payable to her and in case of minor children the Tribunal provided for disbursement of 20% of the amount and the remaining amounts were ordered to be invested in fixed deposits with permission to withdraw periodical interest accruing on the fixed deposits.

6. It is against the aforesaid judgment and award that the Insurance Company of the vehicle involved in the accident has moved this Court in appeal.

7. When such appeals by the Insurance Companies against the awards of the Motor Accident Claims Tribunal come up for admission hearing, ordinarily while admitting the appeal, we grant interim stay in favour of the Insurance Company conditional upon deposit of the entire amount of compensation awarded by the Tribunal together with proportionate costs and interest. However, the learned counsel for the appellant – Insurance Company and several other Insurance Companies made a grievance that the concerned judicial officer presiding over the Motor Accident Claims Tribunal at Surendranagar and thereafter upon his transfer to Rajkot and to Junagadh, has been making excessive awards purporting to base such awards on the decisions of the Apex Court and this Court but such judgments of the said Tribunal lay down

new principles in motor accident claims jurisprudence. The learned advocates for the Insurance Companies also submitted that the Tribunal has not only been making excessive awards, but has also been providing for disbursement of large amounts to widows and minor children of the deceased. Looking to the grievances made on behalf of a large number of Insurance Companies, we notified the First Appeals against the awards made by the same judicial officer and have heard a number of learned advocates appearing for the Insurance Companies as well as two learned advocates appearing as interveners on behalf of the claimants. In this judgment, therefore, we propose to deal with the questions of law raised by the learned advocates for the Insurance Companies which have been raised in several other appeals, but as far as the facts are concerned, we have confined our attention only to the facts of the present appeal. The factual contentions regarding the quantum of compensation raised in the other appeals will be dealt with in those individual appeals.

SUBMISSIONS ON BEHALF OF INSURANCE COMPANIES

8. Mr Shalin N Mehta, learned advocate for New India Assurance Co. Ltd. - appellant in this appeal has raised the following contentions and the learned Advocates for the other Insurance Companies have also made submissions on the same lines:-

8.1 The legal principle laid down by the Tribunal dispensing with the question of negligence is contrary to several decisions of the Apex Court including the decision of the three Judge Bench in Minu B Mehta vs. Balkrishan Ramchandra Nayan, AIR 1977 SC 1248, National Insurance Co. Ltd. vs. Prembhai Patel, (2005) 6 SCC 172, Oriental Insurance Co. Ltd. vs. Hansrajbhai V. Kodala, (2001) 5 SCC 175 and **Deepal Girishbhai Soni vs. United India**

Insurance Co. Ltd., (2004) 5 SCC 385. It is laid down in the aforesaid decisions that in claim petitions filed under Section 110A of the Motor Vehicles Act, 1939 and under the corresponding provisions of Section 166 of the Motor Vehicles Act, 1988, the claimants have to prove negligence of the driver or the owner of the offending vehicle involved in the accident and that the liability of the driver/owner of the vehicle to pay compensation in such cases and the consequential liability of the Insurance Company to satisfy the award of the Tribunal is based on “fault liability” in contrast to “no fault liability” under Sections 140 and 163A of the 1988 Act. The two Judge Bench in Kaushnuma Begum's case (2001) cannot be treated as having overruled the principle laid down by the three Judge Bench in Minu Mehta's case (1977) in emphatic terms that proof of negligence is necessary before the owner or the Insurance Company could be held to be liable for the payment of compensation in a motor accident claim case. This principle has also been reiterated in the other decisions of the Apex Court.

8.2 The award of Rs.1,00,000/- under the head of conventional amount for the loss of expectation of life is not only excessive, but also arbitrary and perverse and contrary to several decisions of the Apex Court. In some claim petitions, the same Claims Tribunal has even awarded Rs.1,50,000/- under the head of conventional amount for loss of expectation of life or for loss to the estate. In several past cases, the Apex Court has awarded a sum between Rs.15,000 to Rs.20,000 to the claimants under the head of conventional amount of compensation for loss to the estate or for loss of expectation of life. The Tribunal has erred in relying upon the decision in Lata Wadhwa vs. State of Bihar, (2001) 8 SCC 1997 which was rendered in the peculiar facts of that case. In any case, the revision of the conventional amounts cannot be permitted to be done by the Claims Tribunal and that it is only the Hon'ble Supreme Court or the High Courts which can undertake such exercise.

8.3 The general disposition of the Tribunal on assessment of income, deduction of the amount which the deceased would have spent on himself had he not died in the accident and adoption of multiplier are not borne out from the decisions relied upon by the Tribunal, and are also contrary to the well settled legal principles enunciated by the Apex Court and this Court.

8.4 The Tribunal has also erred in disbursing large amounts to the widow and minor children of the deceased whose interests are required to be protected as laid down in several decisions of the Apex Court and of this Court.

8.5 The Tribunal has been using intemperate language in its judgments.

STATUTORY PROVISIONS

9. Before dealing with the rival contentions on this issue, it would be profitable to refer to the relevant statutory provisions of the Indian Fatal Accidents Act, 1855 as well as the Motor Vehicles Act, 1939 and the Motor Vehicles Act, 1988 (hereinafter referred to “the 1939 Act” and “the 1988 Act”).

10. While under the common law a person injured in an accident caused by a negligent act of the defendant had the right to sue the defendant for damages, upon the death of such injured person the doctrine of actio personalis moritur cum persona (personal cause of action dies with the death of the person) was an impediment to the legal heirs of the deceased getting

compensation. The Indian Fatal Accidents Act, 1855 was an Act to provide compensation to families for loss occasioned by the death of a person caused by an actionable wrong. The preamble to the Act provided that "whereas no action or suit is now maintainable in any Court against a person who, by his wrongful act, neglect or default, may have caused the death of another person, and it is often-times right and expedient that the wrong-doer in such case should be answerable in damages for the injury so caused by him; it is enacted as follows -" Sections 1A and 2 are the only relevant Sections for the purposes of the present controversy and they read as under :-

> "**1A. Suit for compensation to the family of a person for loss occasioned to it by his death by actionable wrong** .- Whenever the death of a person shall be caused by wrongful act, neglect or default, and the act, neglect or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, the party who would have been liable if death had not ensued shall be liable to an action or suit for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to felony or other crime.
>
> Every such action or suit shall be for the benefit of the wife, husband, parent and child, if any, of the person whose death shall have been so caused, and shall be brought by and in the name of the executor, administrator or representative of the person deceased; and in every such action the Court may give such damages as it may think proportioned to the loss resulting from such death to the parties respectively, for whom and for whose benefit such action shall be brought; and the amount so recovered, after deducting all costs and expenses, including the costs not recovered from the defendant, shall be divided amongst the beforementioned parties, or any of them, in such shares as the Court by its judgment or decree shall direct.

> **2. Not more than one suit to be brought**.- Provided always that not more than one action or suit shall be brought for, and in respect of the same subject-matter of complaint;
>
> **Claim for loss to estate may be added**,- Provided that, in any such action or suit, the executor, administrator or representative of the deceased may insert a claim for and recover any pecuniary loss to the estate of the deceased occasioned by such wrongful act, neglect or default, which sum, when recovered, shall be deemed part of the assets of the estate of the deceased."
>
> (emphasis supplied)

11. The relevant provisions for constituting Motor Accident Claims Tribunals for adjudication of compensation claims and their powers and procedures are similar in Chapter VIII of Motor Vehicles Act, 1939 and Chapter XII of the Motor Vehicles Act, 1988. Since the decision in Minu B Mehta (AIR 1977 SC 1248) heavily relied upon by the Insurance Company was concerned with the 1939 Act, we quote the provisions from the said Act. Sections 110A to 110F were inserted in the 1939 Act by Act 100 of 1956. Sub-section (1) of Section 110 read as under :-

> "**110.Claims Tribunals** – (1) A State Government may, by notification in the Official Gazette, constitute one or more Motor Accidents Claims Tribunals (hereinafter referred to as Claims Tribunals) for such area as may be specified in the notification <u>for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles</u>, or damages to any property of a third party so arising, or both:
>
> Provided that ... ...
>
> (emphasis supplied)

Section 110A provided as to who can make an application for compensation, the territorial jurisdiction of the

Tribunal and the period of limitation. Section 110B provided that on receipt of the application for compensation under Section 110A, the Claims Tribunal shall, after giving the parties an opportunity of being heard, hold an inquiry into the claim and may make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid and also specifying the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be. Section 110C prescribed the procedure and powers of Claims Tribunals. Section 110CC conferred discretion on the Tribunal to award simple interest on the amount of compensation at such rate and from such date not earlier than the date of making the claim as it may specify in this behalf.

Section 110F provided for Bar of jurisdiction of Civil Courts in the following terms:-

> **"110-F. Bar of jurisdiction of Civil Courts**. - Where any Claims Tribunal has been constituted for any area, no Civil Court shall have jurisdiction to entertain any question relating to any claim for compensation which may be adjudicated upon by the Claims Tribunal for that area, and no injunction in respect of any action taken or to be taken by or before the Claims Tribunal in respect of the claim for compensation shall be granted by the Civil Court."

12. Section 92A inserted by Act 47 of 1982 w.e.f. 1.10.1982 provided for liability to pay compensation in certain cases on the principle of "no fault". Sub-section (1) thereof read as under :-

> "(1) Where the death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section."

Sub-section (2) thereof provided for fixed amounts of compensation in fatal cases and in cases of permanent disablement. Sub-sections (3) and (4) thereof read as under :-

> "(3) In any claim for compensation under sub-section (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person.
>
> (4) A claim for compensation under sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall be quantum of compensation recovered in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement."
>
> (emphasis supplied)

While inserting Section 92A, the Amendment Act also added the following explanation to Section 110.

> Explanation – For the removal of doubts, it is hereby declared that the expression 'claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles' includes claims for compensation under Section 92-A."

13. The 1939 Act was thereafter repealed and substituted by the 1988 Act with effect from 1.7.1989 and the corresponding provisions regarding jurisdiction of the Tribunal to make award are in similar terms and are to be found in Sections 165 to 175 (corresponding to Sections 110 and 110F of the 1939 Act). Section 140 corresponds to Section 92A of the 1939 Act. Section 161 provides for compensation to be paid by General Insurance Corporation of India (Government of India undertaking) token amounts of compensation in a fatal case (Rs.25,000/-) as well as a

permanent disablement case (Rs.12,500/-) arising from any “hit and run” case, where the identity of the vehicle is unknown. Chapter XII in MV Act, 1988 relating to Claims Tribunals also includes the provision excluding jurisdiction of the Civil Courts by providing Section 175 which is in pari materia with Section 110F of the 1939 Act.

> **“175. Bar on jurisdiction of Civil Courts**. - Where any Claims Tribunal has been constituted for any area, no Civil Court shall have jurisdiction to entertain any question relating to any claim for compensation which may be adjudicated upon by the Claims Tribunal for that area, and no injunction in respect of any action taken or to be taken by or before the Claims Tribunal in respect of the claim for compensation shall be granted by the Civil Court.”

With effect from 14.11.1994 the Parliament inserted Section 163A, which reads as under :-

> “163A. Special provisions as to payment of compensation on structured formula basis.- (1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorized insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.
>
> Explanation.- For the purposes of this sub-section, “permanent disability” shall have the same meaning and extent as in the Workmen's Compensation Act, 1923 (8 of 1923).
>
> (2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other persons.

> (3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule."
>
> (emphasis supplied)

CASE LAW CITED ON NATURE OF LIABILITY: Issue of Negligence

14. When the 1939 Act was in force, a Division Bench of the Bombay High Court through concurring judgments in case of BR Nayan vs. Minu Mehta, AIR 1977 Bom. 53, had taken the view that "public good requires that everyone injured, viz., by the use of motor vehicle, must immediately get compensation for the injury. Every person has a right to safety and security of his person irrespective of fault or negligence or carelessness or inefficient functioning of the motor vehicle. Every person has a right to claim compensation as that is the only way of remedying the injury caused to him in a modern urbanised, industrialized and automobile ridden life."

The claimant in that case was a doctor who was driving his car. The truck owned by Minu B Mehta & another came from the opposite directions at a high speed, crossed over the road divider and hit the car. The owners pleaded that the truck was being driven at a moderate speed, but all of a sudden, there was a mechanical failure. The Tribunal rejected the defence of sudden mechanical failure and held the truck driver negligent and passed the award against the driver, owner and insurer of the truck. The owner and insurer of the truck preferred appeals before the High Court. All the findings of the Tribunal were confirmed by the High Court, which also made the above observations.

In further appeal (Minu B Mehta vs. BR Nayan, AIR 1977 SC 1248), the Apex Court disapproved of the view of the Bombay High Court in the following emphatic terms :-

> "The reasoning of the two learned Judges is unacceptable as it is opposed to basic principles of the owner's liability for negligence of his servant and is based on a complete misreading of the provisions of Chapter VIII of the Act. The High Court's zeal for what is considered to be protection of public good has misled it into adopting a course which is nothing short of legislation."

After similarly disapproving similar views of the Andhra Pradesh and Patna High Courts, the Apex Court concluded with the following words :-

> "Unless these ideas are accepted by the legislature and embodied in appropriate enactments Courts are bound to administer and give effect to the law as it exists today. We conclude by stating that the view of the learned Judges of the High Court has no support in law and hold that proof of negligence is necessary before the owner or the insurance company could be held to be liable for the payment of compensation in a motor accident claim case."
>
> (emphasis supplied)

15. Thereafter in Gujarat State Road Transport Corporation, Ahmedabad vs. Ramanbhai Prabhatbhai, (1987) 3 SCC 234, the Apex Court considered the above issue. A 14 year old boy was run over by a bus belonging to the appellant- Gujarat State Road Transport Corporation. The claim petition filed by two brothers of the deceased was allowed by the Tribunal and an award for compensation of Rs.32,000/- was made in favour of the brothers. The Tribunal and the High Court rejected the ST Corporation's contention that the claim petition could not be filed by brothers, because under the Fatal Accidents Act, 1855, (for brevity 1855 Act), the claim could only be made by parents, children and spouse of the deceased.

In Appeal, the Apex Court examined the scheme of the 1855 Act and the MV Act, 1939 and while rejecting the appeal of

the Corporation made the following observations :-

> "9. When the Fatal Accidents Act, 1855 was enacted there were no motor vehicles on the roads in India. Today, thanks to the modern civilization, thousands of motor vehicles are put on the road and the largest number of injuries and death are taking place on the roads on account of the motor vehicle accidents. In view of the fast and constantly increasing volume of traffic, the motor vehicles upon the roads may be regarded to some extent as coming within the principle of liability defined in Rylands vs. Fletcher, (1868) LR 3 HL 330. From the point of view of the pedestrian the roads of this country have been rendered by the use of the motor vehicles highly dangerous. 'Hit and run' cases where the drivers of the motor vehicles who have caused the accidents are are not known, are increasing in number. Where a pedestrian without negligence on his part is injured or killed by a motorist whether negligently or not, he or his legal representatives, as the case may be, should be entitled to recover damages if the principle of social justice should have any meaning at all. In order to meet to some extent the responsibility of the society to the death and injuries caused in road accidents, there has been a continuous agitation throughout the world to make the liability for damages arising out of motor vehicle accidents as a liability without fault."
>
> (emphasis supplied)

When its attention was invited to the decision in Minu B. Mehta vs. Balkrishna R Nayan, (supra), the Apex Court held in the above case (GSRTC vs. Ramanbhai Prabhatbhai), that "with great respect, it should be osberved that the observations of this Court on the above question were in the nature of *obiter dicta* since, as already stated there was no necessity to go into the question whether proof of negligence on the part of the driver of the motor vehicle was necessary or not to claim damages under Chapter VIII of the Act because it had been found both by the High Court and this Court that such negligence had been in fact established."

16. The question again came to be examined at considerable length in Kaushnuma Begum vs. New India Assurance Co. Ltd., 2001 (2) SCC 9. The facts were -

At about 7.00 p.m. on 20.3.1986, the jeep which was the vehicle involved in the accident capsized while it was in motion. The cause was bursting of the front tyre of the jeep. In the process, the vehicle hit and crushed the deceased aged 35 years who was walking on the road and who later succumbed to the injuries sustained in the accident. The claim petition seeking compensation of Rs.2,36,000/-came to be filed by the widow and children of the victim of the accident. The Tribunal dismissed the claim petition on the ground that whatever may be the cause of the bursting of the tyre, the rashness and negligence of the jeep driver was not established. While dismissing the claim petition under Section 110B of the 1939 Act, the Tribunal directed the Insurance Company to pay Rs.50,000/- to the claimants by way of no fault liability envisaged in Section 92A of the 1939 Act (corresponding to Section 140 of the 1988 Act). The High Court dismissed the claimants' appeal.

It was in this background that the Apex Court posed the question as under (para 12) :-

> “Even if there is no negligence on the part of the driver or owner of the motor vehicle, but accident happens while the vehicle was in use, should not the owner be made liable for damages to the person who suffered on account of such accident ? This question depends upon how far the rule in Rylands v. Fletcher, 1861-73 All ER 1, can apply in motor accident cases.”

After referring to the decision in Rylands vs. Fletcher, Winfield's commentaries on Tort [enumerating seven defences

recognized in common law against action brought on the strength of the rule – (1) consent of the plaintiff, (2) common benefit, (3) act of stranger, (4) exercise of statutory authority (5) act of God, **(6)default of the plaintiff i.e. if the damage is caused solely by the act or default of the plaintiff himself** and (7) remoteness of consequences where the rule will not apply**]**, and the decision of the Apex Court in MC Mehta vs. Union of India, 1987 (1) SCC 395, the Bhopal Gas leak disaster cases, and the above quoted observations in GSRTC vs. Ramanbhai Prabhatbhai, 1987 (3) SCC 234, the Apex Court held as under :-

> "18. Like any other common law principle, which is acceptable to our jurisprudence, the rule in Rylands v. Fletcher, 1861-73 All ER 1, can be followed at least until any other new principle which excels the former can be evolved, or until legislation provides differently. Hence, we are disposed to adopt the Rule in claims for compensation made in respect of motor accidents.
>
> 19. 'No fault liability' envisaged in section 140 of the MV Act is distinguishable from the rule of strict liability. In the former the compensation amount is fixed and is payable even if any one of the exceptions to the rule can be applied. It is a statutory liability created without which the claimant should not get any amount under that count. Compensation on account of accident arising from the use of motor vehicles can be claimed under the common law even without the aid of a statute. The provisions of the MV Act permit that compensation paid under 'no fault liability' can be deducted from the final amount awarded by the Tribunal. Therefore, these two are resting on two different premises. We are, therefore, of the opinion that even apart from section 140 of the MV Act, a victim in an accident which occurred while using a motor vehicle, is entitled to get compensation from a Tribunal unless any one of the exceptions would apply. The Tribunal and the High Court have, therefore, gone into error in divesting the claimants of the compensation payable to them."
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> (emphasis supplied)

17. After pronouncement of this judgment but before it was signed, we have come across a very recent decision of the Apex Court rendered on April 2, 2007 in Civil Appeal No.5825 of 2006 (Oriental Insurance Co. Ltd. vs. Meena Variyal & Ors.). A two Judge Bench of the Apex Court has considered the law on the question of negligence in context of the following facts :-

One SC Variyal was employed as a Regional Manager in the Company which owned the car in question. Variyal was provided with the car by his employer. The vehicle was insured with the appellant-Insurance Company. On 14.6.1999 the vehicle met with an accident resulting into death of SC Variyal. The widow and daughter filed the claim petition under Section 166 of the Act. According to the claimants, the deceased was driving along with his "companion" Mahmood Hasan after completing his work for the employer; at about 11.30 pm the car collided with a tree due to the rash and negligent driving of the car by Mahmood Hasan. The deceased was an occupant of the car. The claim petition was filed against the employer (owner of the car) and against the Insurance Company. Mahmood Hasan who was allegedly driving the car at the time of the accident was not impleaded. No reason was given in the claim for his not being impleaded. The employer-Company did not contest the claim petition. The Insurance Company's case was that there was collusion; that the deceased himself was driving the vehicle, hence the heirs of the negligent driver were not entitled to claim any compensation. The Tribunal held that the evidence disclosed that Variyal i.e. the deceased was driving the vehicle; that Variyal was not holding a valid driving licence when he drove the car. The Tribunal, therefore, exonerated the Insurance Company but held the owner of the car liable to pay compensation of Rs.7.20 lakhs. The claimant filed the appeal before the High Court and

relied on the decision of the Apex Court in Swaran Singh's case (2004 (3) SCC 297) in support of the contention that even if the driver did not hold a valid driving licence, the Insurance Company was liable. Relying on the said decision, the High Court allowed the appeal of the claimants and directed the Insurance Company to pay the compensation amount as determined by the Tribunal.

The Insurance Company carried the matter before the Apex Court which noted that the High Court had not reversed the finding of the Tribunal that the deceased himself was driving the vehicle and that the High Court did not consider the question whether the accident occurred due to his negligence or otherwise.

> "Ordinarily, a contract of insurance is a contract of indemnity. When a car belonging to an owner is insured with the insurance company and it is being driven by a driver employed by the insured, when it meets with an accident, the primary liability under law for payment of compensation is that of the driver. Once the driver is liable, the owner of the vehicle becomes vicariously liable for payment of compensation. It is this vicarious liability of the owner that is indemnified by the insurance company.
>
> As we have noticed, the relevant provisions of the Act are not intended to jettison all principles of law relating to a claim for compensation which is still based on a tortious liability. The Tribunal ought to have, in the case on hand, directed the claimant to implead Mahmood Hasan who was allegedly driving the vehicle at the time of the accident. Here, there was also controversy whether it was Mahmood Hasan who was driving the vehicle or it was the deceased himself. Surely, such a question could have been decided

only in the presence of Mahmood Hasan who would have been principally liable for any compensation that might be decreed in case he was driving the vehicle.

After noting that there was no finding that Mahmood Hasan, another employee of the owner, was driving the vehicle and that even if he was driving, there was no finding of his negligence, the Apex Court held that the deceased was not covered by the insurance policy taken in terms of the Act – without any special contract – and that there was no award under the Workmen's Compensation Act either. Hence the Court restored the award of the Tribunal exonerating the appellant-Insurance company from liability.

The Apex Court also referred to the decision in Gujarat SRTC's case (1987(3) SCC 234) and observed as under :-

> ".. On a careful understanding of the decision in Gujarat SRTC we cannot understand it as having held that in all claims under the Act proof of negligence as the basis of a claim is jettisoned by the scheme of the Act. In the context of Sections 166 and 163-A of the Act of 1988, we are persuaded to think that the so-called obiter observations in Minu B Mehta's case govern a claim under Section 166 of the Act and they are inapplicable only when a claim is made under Section 163-A of the Act. Obviously, it is for the claimant to choose under which provision he should approach the Tribunal and if he chooses to approach the Tribunal under Section 166 of the Act, we cannot see why the principle stated in Minu B Mehta case should not apply to him. We are, therefore, not in a position to accept the argument of learned counsel for the respondents that the observations in Minu B Mehta case deserve to be ignored.
>
> 27. We think that the law laid down in *Minu B. Mehta v. Balkrishna Ramchandra Nayan* was accepted by the legislature while enacting the Motor Vehicles Act, 1988 by introducing Section 163-A of the Act providing for payment of

> compensation notwithstanding anything contained in the Act or in any other law for the time being in force that the owner of a motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of the motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be, and in a claim made under sub-section (1) of Section 163-A of the Act, the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle concerned. Therefore, the victim of an accident or his dependants have an option either to proceed under Section 166 of the Act or under Section 163-A of the Act. Once they approach the Tribunal under Section 166 of the Act, they have necessarily to take upon themselves the burden of establishing the negligence of the driver or owner of the vehicle concerned.

We also invited the attention of the learned advocates to the above decision and considered their further submissions with reference to the above decision.

18. We may also refer to the following decisions of the Apex Court relied upon by the learned advocate for the Insurance Company in support of the contention that the claim petition under Section 166 can only be decided on the basis of fault liability.

18.1 In Oriental Insurance Co. Ltd. vs. Hansrajbhai V Kodala, (2001) 5 SCC 175, the Apex Court gave, inter alia, the following reasons for rejecting the claimants' contention that right to get compensation under Section 163-A is in addition to the right to claim compensation on “fault liability”:-

> “(1) ... ...
>
> (2) In case where compensation is paid on no fault liability under Sections 140 and 161 in case of 'hit and run motor accident' the legislature has provided adjustment or refund of the said compensation in case where compensation is determined and payable under the award on the basis of fault liability under section

166/168 of the Act. ....

(3) & (4) ....

(5) The procedure of giving compensation under section 163-A is inconsistent with the procedure prescribed for awarding compensation on fault liability. Under section 163-A compensation is awarded without proof of any fault while for getting compensation on the basis of fault liability claimant is required to prove wrongful act, neglect or default of the owner of the vehicle or vehicles concerned."

18.2 Incidentally, the decision in Kodala's case (supra) came up for reconsideration by a three Judge Bench in Deepal Girishbhai Soni vs. United India Insurance Co. Ltd., (2004) 5 SCC 385. The Court reiterated the view in Kodala's case (supra) that the scheme as envisaged under section 163A of the Act provides for final determination of the rights and obligations of the parties. The amount of compensation payable under Section 163A is not to be altered or varied in any other proceedings. In terms of the said provision, a distinct and specified class of citizens, namely, persons whose income per annum is Rs.40,000 or less is covered thereunder whereas Sections 140 and 166 cater to all sections of society. The Court accordingly held that remedy for payment of compensation both under Sections 163-A and 166 being final and independent of each other as statutorily provided, a claimant cannot pursue his remedies thereunder simultaneously. One, thus, must opt or elect to go either for a proceeding under Section 163-A or under Section 166 of the Act, but not under both. On the other hand, right to claim compensation under Section 140, unlike the right under Section 163A, is in addition to any other right to claim compensation on the principle of fault liability.

18.3 Thereafter a three Judge Bench of the Apex Court has made the following observations in National Insurance Co. Ltd. vs. Prembai Patel, (2005) 6 SCC 172 (para 6) :-

> "In a petition under Workmen's Compensation Act the injured or the legal heirs of the deceased workmen have not to establish negligence as a pre-condition for award of compensation. But the claim petition before the Motor Accidents Claims Tribunal is an action in tort and the injured or the legal representatives of the deceased have to establish by preponderance of evidence that there was no negligence on the part of the injured or deceased and they were not responsible for the accident. The exception to this general rule is given in section 140 of the Act where the legislature has specifically made provisions for payment of compensation on the principle of no fault liability."
>
> (emphasis supplied)

19. On the basis of the aforesaid decisions of the Apex Court rendered by three Judge Benches - in Minu Mehta's case (1977), Deepal G Soni's case (2004) and Prembai Patel's case (2005) and also the recent decision in Meena Variyal's case, - the learned counsel for the appellant – Insurance Company vehemently submitted that -

19.1 The claim petitions under Section 166/168 are still governed by the fault liability principle and that it was on account of the rigor of the said provisions that the Parliament inserted Section 92A in 1939 Act and Sections 140 and 163A in the 1988 Act. It is submitted that even after the Apex Court held in Minu Mehta's case (1977) that the motor accident claim petitions have to be decided on the basis of the fault liability, the Parliament retained the relevant provisions in the 1988 Act; thus indicating legislative intention that the fault liability principle applicable in an action for tort was also applicable to the claim petitions under Section 166/168 of the Act. If the legislative intent was otherwise, the Parliament would have appropriately reframed Sections 166/168 of

the 1988 Act and would not have provided for separate sections like Section 92A in 1939 Act or Sections 140 and 163A in the 1988 Act. It is further vehemently submitted that the three Judge Bench in Minu Mehta's case very consciously and clearly considered the question of fault liability and expressly overruled the view of the Bombay High Court and the Patna High Court that negligence was not required to be proved for getting compensation in a claim petition under the Motor Vehicles Act. Hence, the principle laid down in the Minu Mehta's case cannot be considered to be an *obiter dicta.*

19.2 Even in the decision in GSRTC vs. Ramanbhai Prabhatbhai (1987), the Apex Court specifically observed that the insertion of Section 92A in the 1939 Act was a clear departure from the general law that negligence was required to be proved in an action for damages. Hence the claim petitions under Section 166/168 of the Act are still required to be decided on the basis of fault liability principle and the Motor Accident Claims Tribunal will have to decide in each individual case the question of negligence of the driver/owner of the vehicle involved in the accident and that on failure to prove the negligence of the driver/owner of the vehicle involved in the accident, the claim petition has to be dismissed.

19.3 The decision in Kaushnuma Begum's case must be confined to the facts of that particular case where a pedestrian walking on the road was hit by a vehicle when its tyre burst which is very unusual. The principle of *res ipsa loquitor* was applicable. It is submitted in the alternative that even if Kaushnuma Begum's case is held to govern the field, it can be treated as applicable only to a case with similar facts and the decision cannot be treated as laying down a general proposition that fault liability principle will not apply to any motor accident claim petition. Strong reliance is placed on the decision of the Apex Court in Indian Drugs &

Pharmaceuticals Ltd. vs. Workman, 2007 (1) SCC 408 to contend that everything in a decision is not a precedent and that the scope and authority of a precedent should never be expanded unnecessarily beyond the needs of a given situation because the decision ordinarily is decision on the case before the Court.

20. On the other hand, Mr Purohit and Ms Ajmera for the claimants submitted that -

20.1. While the Fatal Accident Act in express terms provides for liability upon proof of wrongful act, neglect or default of the driver, none of the provisions in the Motor Vehicles Act, 1939 or 1988 provide that there should be any wrongful act, neglect or default of the defendant for claiming compensation from the owner/driver/Insurance Company of the vehicle involved in the accident. All that is required for the claimants to prove in such claim petitions is that the accident had arisen out of the use of the motor vehicle. The legislature has thus not provided for any fault liability in Section 166/168 of the Act.

20.2 It is also submitted that the decision of the Apex Court in Kaushnuma Begum's case directly and squarely governs the controversy at hand and that it is not open to this Court to consider the submissions being made on behalf of the appellant – Insurance Company that the said decision runs counter to the decisions in Minu Mehta's case or any other case. In Prembai's case, the only controversy was whether the liability of the insurer was limited to the extent of the liability under the Workmen's Compensation Act. The controversy in Hansraj Kodala's case and Deepal G Soni's case was whether the compensation under Section 163A of the Act is interim or final compensation and in neither of those cases nor even in the case of Prembai's case (2005) was the Apex Court called

upon to decide the specific question whether the claim petitions under Section 166/168 are required to be decided on the basis of the fault liability principle. Hence, some incidental observations made by the Apex Court in the above cases would not whittle down the ratio categorically and firmly laid down by the Apex Court in Kaushnuma Begum's case. The decision in Kaushnuma Begum's case has not been considered in the recent two Judge Bench decision in Meena Variyal's case.

20.3 Reliance is also placed on the literature regarding the number of road accidents to fortify the view of the Apex Court in Kaushnuma Begum's case. Road accidents have become an inevitable feature of modern life and the number of road accidents has been going up. Automobiles per se have the potential of being hazardous to the safety of persons moving on the roads and also travelling in the vehicles and, therefore, the application of the strict liability principle in motor accident claim cases is not only justified but should also be welcome.

DISCUSSION : NATURE OF LIABILITY – ISSUE OF NEGLIGENCE

21. In “the Law of Torts” by Ratanlal Dhirajlal 25th Edition edited by Justice GP Singh, the Rule of Strict Liability has been explained as under:-

> “There are many activities which are so hazardous that they constitute constant danger to person and property of others. The law may deal with them in three ways. It may prohibit them altogether. It may allow them to be carried on for the sake of their social utility but only in accordance with statutory provisions laying down safety measures and providing for sanctions for non-

compliance. It may allow them to be tolerated on condition that they pay their way regardless of any fault. The last is the doctrine of strict liability. The undertakers of the activities have to compensate for the damage caused irrespective of any carelessness on their part. The basis of liability is the foreseeable risk inherent in the very nature of the activities. In this aspect, the principle of strict liability resembles negligence which is also based on foreseeable harm. But the difference lies in that the concept of negligence comprehends that the foreseeable harm could be avoided by taking reasonable precautions and so if the defendant did all that which could be done for avoiding the harm, he cannot be held liable except possibly in those cases where he should have closed down the undertaking. Such a consideration is not relevant in cases of strict liability where the defendant is held liable irrespective of whether he could have avoided the particular harm by taking precautions. The rationale behind strict liability is that the activities coming within its fold are those entailing extraordinary risk to others, either in the seriousness or the frequency of the harm threatened. "Permission to conduct such an activity is in effect made conditional on its absorbing the cost of the accidents it causes, as an appropriate item of its overhead."

(emphasis supplied)

22. To appreciate the heart of the debate, we may broadly categorise the civil **liability to pay compensation in different categories in terms of the burden of proof on the plaintiff/claimants** arranged in the descending order:-

I Fault Liability
(i) burden of proof on plaintiff
(ii) burden of proof on defendant
II Strict Liability
III No Fault Liability

I Fault Liability:

(i) Where **the burden is on the plaintiff** to prove some fault, negligence or wrongful act on the part of the defendant:

the common law as well as the Indian Fatal Accidents Act, 1855 provide for this kind of tortious liability. Here, even after it is admitted or shown that the accident arose out of the use of the motor vehicle in question, if no further evidence is led on the relevant issue by any party, the plaintiff will fail and the claim petition will be dismissed.

(ii) Where **the burden is on the defendant** to prove that he took all reasonable care and precautions i.e. the accident did not result from any fault or negligence or wrongful act on his part:

Once it is shown that the accident arose out of the use of the motor vehicle in question, if no evidence is led by any party on the relevant issue, the Court will decide the issue in favour of the plaintiff and proceed to quantify the compensation amount in favour of the claimant.

III No fault liability or Absolute liability:

Sections 140 and 163A of the Motor Vehicles Act provide for this kind of liability. Here neither the plaintiff's claim can be defeated nor the quantum of compensation can be reduced

on the ground that the defendant was not negligent, but the plaintiff was negligent. In Deepal Girishbhai Soni vs. United India Insurance Co. Ltd., (2004) 5 SCC 385 (para 66), the three Judge Bench has held that “Section 163-A of the Act covers cases where even negligence is on the part of the victim. It is by way of an exception to Section 166 and the concept of social justice has been duly taken care of”. Apart from the above statutory provisions of the Act applicable to motor accident claim cases, in MC Mehta vs. Union of India, (1987) 1 SCC 395 (the Bhopal gas leak disaster case) also this liability was applied on the concerned industrial unit.

II **<u>Strict liability or Rule in Rylands vs. Fletcher</u>:**

This kind of liability would apparently not fall in either of the above categories, because here the plaintiff is not required to prove negligence of the defendant (and in that sense it would not fall under “the first part of fault liability), but at the same time it is open to the defendant to plead and prove that the accident was caused by negligence on the part of the plaintiff himself (and therefore this would not fall under “no fault liability”). It is also open to the defendant to invoke any other out of the seven exceptions to the Rule in Rylands vs. Fletcher. What exactly then is the nature of the strict liability which is, on the one hand, a departure from the traditional fault liability principle insofar as it does not require the plaintiff to plead and prove negligence of the defendant and on the other hand, a departure from the no fault liability principle insofar as it permits the defendant to plead and prove negligence on the part of the plaintiff resulting into the accident for the purpose of dismissing the claim.

23. The foundation of the strict liability principle which has been well appreciated in Kaushnuma Begum's case is that a liability

does not necessarily have to be either -

(i) no fault liability, or
(ii) fault liability arising from defendant's negligence to be pleaded and proved by the plaintiff.

As indicated earlier, strict liability principle lies in between the above two principles. Where it is applicable, negligence on the part of the defendant is to be presumed and then in order to defeat the action for compensation, it is not enough for the defendant to show that he took all reasonable care and precautions, but he has to further plead and prove that the accident was caused by negligence of the plaintiff. Strict liability principle is, therefore, not necessarily opposed to the fault principle in the general law of torts, but in a sense the strict liability principle is closer to shifting the burden of proof from the plaintiff to the defendant.

24. In Jacob Mathew vs. State of Punjab, 2005 (6) SCC 1, the three Judge Bench of the Apex Court was considering the question of negligence in the context of medical profession and in the statutory backdrop of Section 304A of the Indian Penal Code. In paras 27 and 28 of the said decision, the Court observed that, *res ipsa loquitur* is a rule of evidence which in reality belongs to the Law of Tort. Inference as to negligence may be drawn from proved circumstances by applying the rule if the cause of the accident is unknown and no reasonable explanation as to the cause is coming forth from the defendant. The Court held that a case under Section 304A cannot be decided solely by applying the rule of *res ipsa loquitur.* It would thus appear that *res ipsa loquitur* is a rule of evidence which may not be very easily invoked in cases of civil liability of professionals and can never be applied to prove a criminal offence, but on account of the fact that a motor vehicle

being driven with reasonable care would ordinarily not meet with an accident, the rule of *res ipsa loquitur a*s a rule of evidence is being invoked in motor accident cases with greater frequency than in ordinary civil suits."

(emphasis supplied)

25. It may conceivably be argued that res ipsa loquitur is still a rule of evidence and, though, casting the onus of proof on the defendant, but still the burden of proof would remain on the plaintiff and, therefore, the plaintiff must first lead some oral evidence, otherwise the claim must fail. We are, however, of the view that once the plaintiff in a claim petition is able to show that the accident arose out of the use of the motor vehicle driven by the defendant, the presumption raised in the three Judge Bench decision in Jacob Mathew vs. State of Punjab (supra) that a motor vehicle being driven with reasonable care would ordinarily not meet with an accident is a presumption of fact which the Claims Tribunal should generally be able to raise and, therefore, it is high time to cast the burden of proof on the defendant to show that the accident did not result from any fault, negligence or wrongful act on the part of the defendant. As indicated above, this would still fall short of the strict liability principle where it is not open to the defendant to show that the accident took place in spite of reasonable care and precautions taken by the defendant.

26. We may now refer to the reasoning which led the Apex Court to lay down the law in Minu Mehta's case that proof of negligence is necessary before the owner or the insurer could be held liable for payment of compensation in a motor accident claim case (AIR 1977 SC at page 1257) :-

(A). "The Claims Tribunal is a tribunal constituted by the State Government for expeditious disposal of the motor

claims. The general law applicable is only common law and the law of torts. If under the law a person becomes legally liable then the person suffering the injuries is entitled to be compensated and the Tribunal is authorised to determine the amount of compensation which appears to be just." (Para 26)

(B) "The liability of the owner referred to in Sections 95 and 96 (of the 1939 Act) for which compulsory insurance of motor vehicles is required to be taken is a liability which may be incurred by the owner and which arises out of the use of the motor vehicle on road. In the case of a motor accident, the owner is only liable for negligence and on proof of vicarious liability for the acts of his servant." (Paras 23, 24 and 29)

(C) The plea that the Claims Tribunal is entitled to award compensation which appears to be just when it is satisfied on proof of injury to a third party arising out of the use of a vehicle on a public place without proof of negligence if accepted would lead to the following strange results -

(Paras 26 & 27)

(i) Section 110(1) of the (1939) Act empowers the State Government to constitute one or more Motor Accidents Claims Tribunals for such area as may be specified for the purpose of adjudicating upon motor accident compensation claim cases. The power is optional and the State Government may not constitute a Claims Tribunal for certain areas. The claimant has an option to make his claim before the Civil Court. If the view of the Bombay High Court is accepted, while the Claims

Tribunal can award compensation without referring to common law on torts, the Civil Court would have to determine the liability of the owner on the basis of common law or torts which provides vicarious liability of the owner only for negligent acts of his servant.

(ii) The concept of owner's liability without any negligence is opposed to the basic principles of law. The mere fact that a party received an injury arising out of the use of a vehicle in a public place cannot justify fastening liability on the owner. It may be that a person bent upon committing suicide may jump before a car in motion and thus get himself killed. We cannot perceive by what reasoning the owner of the car could be made liable. The proof of negligence remains the lynch pin to recover compensation. The various enactments have attempted to mitigate a possible injury to the claimant by providing for payment of the claims by insurance.“

27. While the provisions of Section 110(1) of the 1939 Act and Section 165 of the 1988 Act, like the provisions of almost all such legislations, are couched in enabling terms, there is no dispute about the fact that Motor Accident Claims Tribunals have been constituted in all the districts of the country (at least in Gujarat it is so) and, therefore, by virtue of Section 175 of the 1988 Act, Motor Accident Claims Tribunals have the exclusive jurisdiction to entertain and decide motor accident claim petitions in respect of bodily injuries and the jurisdiction of Civil Courts is ousted. Hence there is no possibility of any conflict as regards the principle of liability to be applied in motor accident claim cases.

In Minu Mehta's case, the claimant was driving one of the motor vehicles involved in the accident. Where the victim is on the road, even on application of the strict liability principle, exception (6) to the Rule in Rylands vs. Fletcher provides the default of the deceased himself as a valid defence to dismiss the claim of the heirs of a person who, bent upon committing suicide, would jump before a car in motion and would thus get himself killed.

28. We may now look at the rationale which appealed to the two Judge Bench of the Apex Court in Kaushnuma Begum's case in 2001 and which had also appealed to another two Judge Bench of the Apex Court in GSRTC vs. Ramanbhai Prabhatbhai in 1987. When the Fatal Accidents Act, 1855 was enacted, there were no motor vehicles on the roads but today thousands of motor vehicles are plying on the roads and a large number of injuries and deaths are taking place on the roads on account of the motor vehicle accidents. From the point of view of pedestrians, to take the most charitable view, the roads have almost been monopolized by motor vehicles. Where a pedestrian without negligence on his part is injured or killed by a motorist whether negligently or not, the injured or the legal representative of the deceased should be entitled to recover compensation.

We may further add that when a pedestrian is walking on the road and a vehicle coming from behind knocks him down, he would not be in a position to explain how the accident occurred and it would be very difficult, if not impossible, for him to get witnesses in the present days when strangers in the fast moving urban set up may not like to volunteer to give evidence before police authorities or in the Courts of law where legal formalities consume unduly long time and energy, not to speak of the loss of income which the

witness may suffer for going to such offices or Courts. In case the pedestrian were to die, the heirs of the deceased would find it even more difficult to get evidence to prove negligence of the driver or owner of the vehicle involved in the accident. As observed by the three Judge Bench in Jacob Mathew vs. State of Punjab (quoted in para 23 above), a motor vehicle being driven with reasonable care would ordinarily not meet with an accident. It would, therefore, not be unreasonable to take the view that once the claimant/s show that the injuries/death resulted from the accident which arose out of the use of the motor vehicle, the claimants in such cases may not be required to prove any negligence on the part of the driver/owner of the offending vehicle. At the same time, even in such cases, under Exception 6 to the Rule in Rylands vs. Fletcher, it is open to the defendant to prove negligence of the plaintiff or the victim. This is sufficient to ensure that a negligent pedestrian or his heirs do not get compensation. It also appears to us that the very fact that the Legislature has made provisions for compulsory insurance of motor vehicles for the benefit of third parties and pedestrians on the road have always been held to be covered by the expression "third party", is an additional ground for relaxing in favour of third parties the general rule of evidence throwing burden of proof on the plaintiff.

29. We may also refer to the Research Paper presented before the Third African Road Safety Congress at Pretoria, South Africa from April 14 -17, 1997 as produced by Ms Ajmera. The paper for Financing of Road Safety Actions begins with the introduction of the safety problem - that road accidents is a serious problem throughout the world in social, health and economic terms. It is said that the road accidents commonly is the second largest cause of deaths for economically active people in many countries and is considered by the WHO to be of endemic proportions. Between 50 and 200 people are killed each year for

each million inhabitants in most developed as well as developing countries. The Annual Road Accident Fatalities rate per 10000 vehicles in India is about 25 as compared to just between 1 and 5 in South Africa, Korea and USA. While developed countries have in general succeeded in checking and reversing the rate of road accident fatalities, the number of fatalities have been going up in Asia, Middle East and more particularly in African countries. On the other hand, the rate of road accident fatalities has been considerably going down in Europe and North American countries. It is also indicated in the said paper that it is generally acknowledged that human error is an underlying cause of almost all accidents; human error in observation, decision making and response to the situation at hand. Research in several countries conclude that human error is involved in over 90 per cent of all road accidents and that only a small proportion of accidents can be directly attributed to vehicle defects or faults in road design or maintenance. Sometimes accidents often are the result of a critical combination of several factors and are, therefore, resort to as accidents contributing factors or risk increasing factors.

The 2002 Planning Commission study estimates India's loss from (all) accidents at a colossal Rs.55,000 crore a year, which works out to 3 per cent of the GDP at 2000 prices. There are 12.7 road fatalities per 10,000 vehicles in India; the USA, with 237 million vehicles, has a road fatality rate of only 1.79 (the fatality rates in the UK and Germany are 1.0 and 1.1 respectively).

30. We may also deal with the contention urged on behalf of the Insurance Company that the decision in Kaushnuma Begum's case was rendered per incuriam because it did not refer to the decision in Minu Mehta's case rendered by a three Judge Bench. It is true that the said three Judge Bench decision was not specifically referred to in Kaushnuma Begum's case. However, it cannot be

overlooked that Kaushnuma Begum's case relied on the decision in GSRTC vs. Ramanbhai Prabhatbhai (supra) rendered by a two Judge Bench which, in turn, had considered the decision in Minu Mehta's case. At the same time, it is also true that the recent decision of a two Judge Bench in Oriental Insurance Co. Ltd. vs. Meena Variyal decided in April 2007, which has cast some doubt on the correctness of the observations made by a two Judge Bench in GSRTC vs. Ramanbhai Prabhatbhai (1987) has not referred to the earlier reported decision of another two Judge Bench in Kaushnuma Begum's case (2001) 2 SCC 9. However, as indicated hereinafter, it is possible to reconcile the judgment in Kaushnuma Begum's case and the judgment in Meena Variyal's case by holding that the strict liability rule will apply in a case where a pedestrian has sustained injuries in a motor vehicle accident and the claim petition is filed by the injured pedestrian himself or in case of his death caused by the accident, by his dependents.

31. Before proceeding further, we may refer to the decision in Director of Settlements, AP vs. MR Apparao, 2002 (4) SCC 638, where the Apex Court has held that what is binding under Article 141 of the Constitution as the law declared by the Supreme Court is the principle found out upon a reading of a judgment as a whole, in light of the questions before the Court that forms that ratio and not any particular word or sentence. A judgment of the Court has to be read in the context of questions which arose for consideration in the case in which the judgment was delivered.

In Bhavnagar University vs. Palitana Sugar Mills Pvt. Ltd., (2003) 2 SCC 111, also the Apex Court observed:

> “It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision.”

Recently in M/s. Ispat Industries Ltd. vs. Commissioner of Customs, (2006) 12 SCC 583, the Apex Court has reiterated the well settled principle that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found in the judgment are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case.

32. Even though on a prima-facie reading, the decisions of the two Judge Benches in Kaushnuma Begum's case decided in 2001 and Meena Variyal's case decided recently may appear to be conflicting, in our view, in light of the discussion in para 21 onwards, it is possible to reconcile the two decisions.

We find that while the Kaushnuma Begum's case arose from an accident where a pedestrian was hit by the motor vehicle on account of bursting of the tyre and the driver, therefore, losing his control, on the other hand, Meena Variyal's case arose from an accident caused by the unlicenced driver of the vehicle himself hitting the car against a tree resulting into the death of the driver. In Meena Variyal's case, the case of the claimants that not the deceased, but another employee of the car owner was driving the vehicle was not accepted by the Tribunal and that finding was not disturbed either by the High Court or by the Apex Court. In short, Meena Variyal case, like the Minu Mehta case, was concerned with the claim of a driver (or his heirs) of a motor vehicle involved in the accident. In neither case was the victim a pedestrian on the road.

33. It does appear to us that in Kaushnuma Begum's case the strict liability principle was intended to be applied by the Apex Court in favour of persons who themselves could not have been responsible for causing the accident in question or who have no say

in the plying of motor vehicles on roads, that is to say, pedestrians on the road. That is why in Kaushnuma Begum's case, reference was made to the decision in Gujarat State Road Transport Corporation vs. Ramanbhai Prabhatbhai, (1987) 3 SCC 234 where the Apex Court was at pains to observe as under (we reproduce the first part of the following quotation at the cost of repetition):-

> In view of the fast and constantly increasing volume of traffic, the motor vehicles upon the roads may be regarded to some extent as coming within the principle of liability defined in Rylands vs. Fletcher, (1868) LR 3 HL 330. From the point of view of the pedestrian the roads of this country have been rendered by the use of the motor vehicles highly dangerous. 'Hit and run' cases where the drivers of the motor vehicles who have caused the accidents are are not known, are increasing in number. Where a pedestrian without negligence on his part is injured or killed by a motorist whether negligently or not, he or his legal representatives, as the case may be, should be entitled to recover damages if the principle of social justice should have any meaning at all.
>
> ....
>
> "These provisions (Sections 110A and Section 110B of the Motor Vehicles Act, 1939) are not merely procedural provisions. They substantively affect the rights of the parties. As the right of action created by the Fatal Accidents Act, 1855 was "new in its species, new in its quality, new in its principles, in every way new" the right given to the legal representatives under the Act to file an application for compensation for death due to a motor vehicle accident is equally new and an enlarged one. This new right cannot be hedged in by all the limitations of an action under the Fatal Accidents Act, 1855. New situations and new dangers require new strategies and new remedies."

34. We may also refer to the decision in MP State Electricity Board vs. Shail Kumar, (2002) 2 SCC 162 (para 11) wherein the ratio laid down in Kaushnuma Begums's case was applied to accidents resulting from electrocution and the Court made the following observations :-

> "The rule of strict liability has been approved and followed in many subsequent decisions in England. A recent decision in recognition of the said doctrine is rendered by the House of Lords in Cambridge Water Co. Ltd. vs. Eastern Counties Leather Plc. (1994 (1) All England Law Reports (HL) 53). The said principle gained approval in India, and decisions of the High Courts are a legion to that effect. A Constitution Bench of this Court in Charan Lal Sahu vs. Union Of India (1990 (1) SCC 613) and a Division Bench in Gujarat State Road Transport Corpn. vs. Ramanbhai Prabhatbhai (1987 (3) SCC 234) had followed with approval the principle in Rylands vs. Fletcher. By referring to the above two decisions a two Judge Bench of this Court has reiterated the same principle in Kaushnuma Begum vs. New India Assurance Co. Ltd., (2001 (2) SCC 9)."

35. In light of the above discussion, we are of the view that even if the Courts may not by interpretation displace the principles of law which are considered to be well settled and, therefore, the Court cannot dispense with proof of negligence altogether in all cases of motor vehicle accidents, it is possible to develop the law further on the following lines :-

(i) When the motor vehicle is being driven with reasonable care, it would ordinarily not meet with an accident and, therefore, the rule of res ipsa loquitur as a rule of evidence may be invoked in motor accident cases with greater frequency than in ordinary civil suits (per three Judge Bench in Jacob Mathew vs. State of Punjab, 2005 (6) SCC 1 – quoted in para 23 above)

(ii) In claim petitions where the victim was not driving any of the motor vehicles involved in the accident, the Courts may, therefore, raise a presumption of fact (and not a presumption of law) that the accident in question was caused on account of the motor vehicle not having been driven with reasonable care. Even where such a

presumption is raised, it is open to the defendant in the claim petition to plead and prove that he had taken all care and precaution or that the injured claimant himself (or the deceased) was guilty of a negligent act resulting into the accident. In case of such a plea and proof, the injured plaintiff or the legal representatives of the deceased have to establish by preponderance of evidence that there was no negligence on the part of the injured or the deceased (vide three Judge Bench decision in Prembai Patel's case (2005) 6 SCC 172 – Para 6).

By the above process, the burden of proof may ordinarily be cast on the defendant in a motor accident claim petition to prove that the motor vehicle was being driven with reasonable care.

(iii) the rule of strict liability as explained in Kaushnuma Begum's case (2001) 2 SCC 9 should apply when the person who was injured on account of the motor vehicle accident, or who died on account of the injuries sustained in such accident, was a pedestrian/ bystander/ on road not travelling inside the vehicle.

The justification for this distinction could be that -

(a) The provisions for compulsory insurance provided by Legislature for the benefit of third parties would not be meaningful and efficacious without applicability of strict liability rule.

(b) while pedestrians have no choice about the vehicles being plied on the roads, passengers travelling in motor vehicles have some choice about the vehicle/s in which they would travel.

36. Reverting back to the categorisation that we set out at the commencement of the discussion in para 22 above, the following chart summarizes our views:-

I FAULT LIABILITY (i) **Burden on claimant** to prove negligence of defendant --- (ii) **Burden on defendant** • negligence of defendant presumed • but open to defendant to prove - he took all reasonable care or negligence of injured/deceased or negligence of driver of the other motor vehicle	Claim u/s.166 MV Act where injured/deceased was driving one of the vehicles involved in the accident --- Claim u/s.166 MV Act where injured/deceased was neither a driver nor a pedestrian/ bystander on road (e.g.travelling in the motor vehicle or one of the motor vehicles).
II STRICT LIABILITY • negligence of defendant presumed • but open to defendant to prove - negligence of injured/deceased or any other out of seven exceptions to Rule in Rylands vs. Fletcher	Claim u/s.166 MV Act where injured/deceased was a pedestrian/bystander on road
III NO FAULT LIABILITY OR ABSOLUTE LIABILITY Liability of defendant irrespective of negligence of defendant/s and/or negligence of claimant/deceased	Irrespective of fact whether injured/deceased was on road or travelling in a motor vehicle and irrespective of fact whether injured/deceased was a passenger or a driver u/s.140 MV Act - interim compensation in appln u/s 166 u/s.163A MV Act final compensation as per Schedule II

Note :- Where the injured/deceased was the driver of the sole motor vehicle involved in the accident, claim u/s.166 could be made where the cause of accident is attributed to negligence of the owner or the owner had taken an insurance policy for the owner's liability under the Workmen's Compensation Act, 1923.

37. In the Politics of Jurisprudence, A Critical Introduction to Legal Philosophy, 2nd edition by Roger Cotterrell (Professor of Legal Theory in the University of London)- (published by Oxford University Press), in Chapter 6 – "The Problem of the Creative Judge: Pound and Dworkin," the author has explained Dworkin's views on "law as interpreted" in the following words :-

> "In his writings since the 1980s Dworkin has used analogies with literary interpretation to explain the judge's obligation in creative legal interpretation... ... A judge is like a writer trying to continue a story started by earlier writers. The writer must make the story as good as it can be. This necessitates that what he adds must be consistent with what went before (the requirement of 'fit'), and must make the best of that existing material by interpreting it in the most plausible and attractive way and then adding a contribution that will further enhance it. Since the task of the writer is to continue the story, he cannot simply go off on a personal literary frolic but must create a contribution in a way that is consistent with the best interpretation of the meaning of what went before. ... . Thus, Dworkin claims that his theory does not give judges the freedom of legislators, as the positivist idea of judicial discretion seems to do. They are constrained by the entire structure of values that the legal system represents. They are required to decide cases in ways that will further those values and portray legal doctrine as a whole, as integrated and consistent expression of them. ... ... Dworkin's theory allows judges to assess critically the work of their predecessors even to the extent of declaring and refusing to follow their 'mistakes'. Similarly, legislative provisions are to be considered in relation to the whole environment of relevant legislative history. In some instances this approach could lead a judge to conclusions about

legislation that would be very much more than a straightforward application of statutory words... .”

38. We may conclude this discussion by referring to the following two points of view as noted in Winfield and Jolowicz on Tort, Sixteenth Edition, 2002.

> “... to regard negligence as the normal requirement of responsibility in tort, and to look upon strict liability as anomalous and unjust seems to .... mistake present values as well as past history. In an age when insurance against all forms of liability is commonplace, it is surely not surprising or unjust if the law makes persons who carry on some kinds of hazardous undertakings liable for the harm they do, unless they can excuse or justify it on some recognisable ground.”
>
> (as quoted on page 551)

On the other hand, in Cambridge Water Co. vs. Eastern Counties Leather plc (1994) 2 Appeal Cases 264 (305) the House of Lords did not disagree with the proposition that strict liability might be economically or morally or socially justifiable but it inclined to the view that “as a general rule, it is more appropriate for strict liability in respect of operations of high risk to be imposed by Parliament than by the courts. If such liability is imposed by statute, the relevant activities can be identified, and those concerned can know where they stand. Furthermore, statute can where appropriate lay down precise criteria establishing the incidence and scope of such liability”. (as quoted on page 552)

It will not be out of place to note that Cambridge Water case (supra) dealt with a case of historic pollution. The defendant-Company (Eastern Counties Leather) was uninterruptedly carrying on its business of manufacturing of fine leather since 1879 and was employing about 100 people. The tanning process employed by the defendant-Company used solvents since early 1950s. The Cambridge Water Co. (plaintiff) was drawing water from a borewell for which the pumping station was commissioned in 1979. The

distance between the plaintiff's borewell and the defendant's tannery was 1.3 miles i.e. about 2 kms. Before the defendant-Company changed the method of tanning in 1971, there were spillages of small amount of solvents. The spilled solvents seeped through the tanning floor into the soil below and reached water flow which ultimately reached the strata from where the plaintiff-Company extracted water through a bore hole. The plaintiff brought the action against the defendant claiming damages for nuisance, negligence and under the Rule of Rylands vs. Fletcher for contamination of the water abstracted from the bore hole.

The trial Court dismissed the suit. The Court of Appeal allowed the appeal by applying the strict liability principle and awarded damages of one million pounds. In appeal, the House of Lords held that "the relevant occurrence (see page of solvents and contamination of the water source) took place before the relevant legislation came into force, and it appears that, under the current philosophy, it is not envisaged that statutory liability should be imposed for historic pollution. ....since those responsible at ECL (the defendant Company) could not at the relevant time reasonably have foreseen that the damage in question might occur, the claim of the plaintiff for damages under the rule in Rylands vs. Fletcher must fail".

It was in context of the above facts and controversy that Lord Goff made the above observations quoted in Winfield on Torts. Lord Goff further observed - " .. given that so much well-informed and carefully structured legislation is now being put in place for this purpose, (protection and preservation of the environment and enactment of legislations which make the polluter pay for damage to the environment for which he is responsible), there is less need for the courts to develop a common law principle to achieve the same end, and indeed it may well be undesirable that they should

do so."

(emphasis supplied)

39. We may further add that with the benefits of no fault liability under Section 163A being restricted to cases of victims having annual income upto Rs.40,000/- only and with the number of motor vehicles far outnumbering the number of pedestrians on roads and also with the number of motor vehicle accidents on the rise, the Courts need not shy away from applying the rule of strict liability in cases where the pedestrians become victims. For the same reasons, the Courts also need not shy away from shifting the burden of proving negligence from the claimant to the defendant, where the victim was not driving the motor vehicle.

40. Before actually framing the conclusions, one caveat would be in order:-

Where the claim petition arises from an accident resulting from the use of two or more motor vehicles, while the pedestrian/bystander himself or his heirs (in case of death) will not have to lead their evidence on account of applicability of the principle of strict liability rule, some inquiry would have to be held to find out whether the accident was caused by the sole negligence of the driver/owner of one vehicle or the other or whether the accident was caused by the composite negligence of the driver/owner of two or more vehicles involved in the accident. Even where the strict liability principle applies, it is always open to the defendant to show that the accident was caused solely by the act or default of the deceased/injured himself. As a logical corollary, when two or more motor vehicles are involved in an accident, the driver/owner of each motor vehicle will have the right to plead and prove that the accident was caused solely by the act or default of the driver/owner of the other motor vehicle. If the driver/owner of each motor vehicle pleads that the accident was caused by

negligence of the driver/owner of the other vehicle, the claimants cannot contend that they must get compensation from the driver/owner/insurer of both the motor vehicles without holding any inquiry into the question of negligence. Holding of the inquiry into the question of negligence would be a step before to fastening of joint and several liability on the driver/owner/insurer of both the vehicles.

CONCLUSIONS ON NATURE OF LIABILITY :
ISSUE OF NEGLIGENCE

41. In view of the foregoing discussion, our conclusions on this controversy are as under:-

(i) In claim petitions under Sections 166/168 of the Motor Vehicles Act, 1988, the rule of strict liability (with exceptions thereto) as explained in Kaushnuma Begum's case (2001) 2 SCC 9 would apply where the claim petition is made for compensation for death of or injury to a pedestrian or a by-stander on the road. Here also exception (6) to the rule of strict liability permits the defendant/s to plead and prove that the accident was caused by a negligent act of the pedestrian/bystander.

(ii) In other claim petitions where the injured claimant or the deceased was not driving any motor vehicle, while the Claims Tribunal will have to hold inquiry into the question as to whether the accident in question was caused by any fault, negligence, or wrongful act of the driver/owner of the motor vehicle involved in the accident, it is open to the Claims Tribunal to invoke the rule of res ipsa loquitur as a rule of evidence with greater frequency than in ordinary civil suits (vide the three Judge Bench decision in Jacob Mathew vs. State of Punjab, (2005) 6 SCC 1).

(iii) Where the claim petition arises from an accident resulting from the use of two or more vehicles and the victim was a pedestrian/bystander i.e. a person not traveling in any of the motor vehicles involved in the accident, while the claimant/s would not have to lead their evidence on account of strict liability rule, as explained in para 40 herein above, some inquiry will have to be held to find out whether the accident was caused by the sole negligence of the driver/owner of one or the other vehicle or by the composite negligence of the driver/owner of two or more vehicles involved in the accident.

Conventional Amount for Loss of Expectation of Life

42. The second debate is on the conventional amount for loss of expectation of life, which under the head of loss to the estate is awarded by the Tribunal in the claim petition giving rise to the present appeal and by the same Judicial Officer in several other claim petitions. In the judgment under appeal, the Tribunal awarded compensation of Rs.1,00,000/- under the head of conventional amount for non-pecuniary loss for the following reasons :-

(i) In Lata Wadhwa's case, the Apex Court awarded Rs.50,000/- under the head of conventional amount for loss to the estate. That decision was rendered in the year 2001 in respect of an accident which took place in the year 1996. Considering the fall in value of money, the conventional amount would be Rs.1,00,000/- in the year 2005. For taking this view, the Tribunal heavily relied on the decision of the Delhi High Court in Kamla Devi vs. Govt. of NCT of Delhi, 2005 ACJ 216 (231) wherein the Delhi High Court had awarded Rs.97,700/- as the conventional amount for non-pecuniary loss after referring to the consumer price index for industrial workers.

(ii) In Nagappa vs. Gurudayal Singh, 2003 ACJ 12 = (2003) 2 SCC 274 a three Judge Bench of the Apex Court allowed upward revision in view of inflation.

43. Mr Rajni H Metha, Mr Shalin N Mehta and other learned counsel for the Insurance Companies have made the following submissions :-

(i) By the very nature of this claim, the amount awarded under the head of conventional amount for loss to the estate on account of loss of expectation of life has no linkage with the amounts awarded under the heads of pecuniary loss. Hence, the conventional amounts would remain constant and cannot vary from case to case or year to year.

(ii) The word “conventional” itself suggests that the amount payable under this head is based on convention. Something that is based on custom or convention would remain constant through the changing times. So yearly or steady increases in the conventional amount is basically inconsistent with the very nature of the compensation being awarded.

(iii) In any case, the Claims Tribunal has no power to order increase in the conventional amounts. The Tribunal cannot assume the power to legislate or to make rules to be applied in all cases that come before it, even for steady increase in the conventional amounts with the fall in value of money.

(iv) Assuming that the conventional amount can be revised upward with the fall in value of money, such upward revision cannot be ordered by the Tribunal --

(a) Only the superior Courts i.e the Hon'ble Supreme

Court and the High Courts may undertake such an exercise for upward revision.

(b) But even the superior Courts would not order such an upward revision unless there is adequate material placed before the Court to form an opinion that upward revision is absolutely necessary so that the amount awarded under the conventional head does not become contemptuously low.

(c) In any case, yearly upward revision as a matter of course cannot be countenanced.

(v) No case is made out at present for an upward revision. The awards being made presently in the range of Rs.10,000 to Rs.20,000 cannot be said to be contemptuously low or even unjust, unfair and unreasonable. The amount of Rs.20,000/- being awarded presently is quite reasonable. No compelling case is made out by the claimants for an upward revision of the amount under the said head.

44. On the other hand, Ms Amrita Ajmera, learned advocate intervening on behalf of the claimants has submitted that --

44.1 even if the Tribunal cannot order upward revision, it is always open to this Court to do so Strong reliance is placed on the following decisions to show that this Court has been making periodical upward revision of conventional amounts from Rs.3000 to Rs.5000, then to Rs.10,000 and the last revision upto Rs.20,000 was made in the year 1993:-

(a) Babu Mansa vs. AMC, 1978 ACJ 485

(b) Khodabhai Bhagwanbhai vs. Hirji Tapu, 1980 ACT 237.

(c) Smt. Rafia Sultan vs.ONGC, 26 (2) GLR 1315

(d) Bhanuben P Joshi vs. KB Parmar, 1993 (1) GLH 260.

44.2 In Babu Mansa vs. Ahmedabad Municipal Corporation, 1978 ACJ 485, the following figures of All India Consumer Price Index for industrial workers were relied upon to justify upward revision of compensation amount in injury cases :-

(Base : 1960 – 100)

Month/Year	General Index (Annual Average)
1961	104
1965	137
1970	184
1975	321
1976	296
1977	321
January 1978	325

It is submitted with the support of All India Average Consumer Price Index from 1979 onwards that after the last revision was made on 1st November 1992 on the basis of the Consumer Price Index which was 1198 in December, 1992, the index has risen to 2712 in December 2005 and, therefore, the fall in value of rupee has been more than double in the last 13 years.

Relying on the decision in Babu Mansa (supra), it is submitted that damages for loss of expectation of life are awarded as conventional sum which is taken as the sum which the society deems fair; that conventions change and if judges do not adjust their awards to changing conditions and rising standards of living their assessments of damages will have even less contact with reality than they have had in the recent past or at the present time.

44.3 Strong reliance is also placed on the decision in Lata Wadhwa vs. State of Bihar, (2001) 8 SCC 197, wherein the award of Rs.25,000/- under the head of conventional amount made by the arbitrator was raised by the Apex Court to Rs.50,000/- in case of death of children as also in case of death of women. It is submitted that the decision in Lata Wadhwa's case did not merely record the compromise between the parties, but after the learned counsel for the management of TISCO left the matter to the Court, it was the Court which determined the amount of compensation under the head of conventional amount for loss of expectation of life and, therefore, the decision in Lata Wadhwa's case is as binding a precedent as the other decisions.

44.4 Reliance is also placed on the decision of the Delhi High Court in Kamla Devi vs. Govt. of NCT of Delhi, 2005 ACJ 216. It is submitted that the entire issue was examined by the Delhi High Court threadbare and after considering all the relevant decisions of the Apex Court, the Delhi High Court awarded a sum of Rs.97,700/- as the conventional sum for non-pecuniary loss. It is submitted that the said decision was rendered by the Delhi High Court in 2004 with reference to an accident which took place in the year 1996. Hence, the Tribunal was justified not only in awarding Rs.1,00,000/- under the said head, but also in further revising the figure to Rs.1,50,000/- in the awards made in other claim petitions.

44.5 Strong reliance is placed on the decision of the Full bench of five learned Judges of the Calcutta High Court in New India Assurance Co. Ltd. vs. Smt Tara Sundari Phauzdar, 2003(3) Transport & Accidents Cases 354 (Cal.), to contend that while determining the amount of compensation generally and the conventional amount for loss of expectation of life in particular, the Court cannot be swayed by the financial burden on the Insurance

Company. In the said decision, the Court observed that in a large number of motor accident claim petitions claiming compensation for death of the bread winners in motor accidents, "the Insurance Company has taken advantage of this compulsory insurance of every vehicle in order to carry on its business. Therefore, it has to take whatever has been provided in the statute, good, bad or indifferent. The Insurance Company was never compelled to enter into such business. It has entered into such business on its own volition. Therefore, it has to accept the rule of the game. That apart, sufficient protection has been provided to the Insurance Company by insertion of Section 170 in the statute itself. ... ...

... ... The statutory provisions were enacted to enable the claimants to get the relief in the form of compensation at the earliest without involving them in protracted litigation. The enactment of Sections 146 and 149 in the 1988 Act clearly indicates the legislative intent to protect the claimant. .. .."

45. We must make it clear that what is being considered in this judgment is the compensation for loss of expectation of life which will go to the estate of the deceased and, therefore also popularly known as compensation for loss to the estate. What is being considered here is not the loss of savings after deducting the expenditure which the deceased would have incurred on himself and after deducting the dependency benefit which the deceased would have spent on the dependents. What is, therefore, being awarded as the conventional amount for loss to the estate is only compensation for loss of expectation of life. As observed by the Apex Court in N Sivammal vs. Pandian Roadways Corpn., (1985) 1 SCC 18, damages under this head are not for the passage of length of days but for predominantly healthy life and the assessment is so difficult that only moderate conventional sums are awarded.

The law puts money value on a person's expectation of his life, so that if by an actionable wrong it is curtailed, he can lay a

claim for loss of expectation of life or if he is dead, his legal representatives can bring a claim on that score as an item of loss to his estate. This item as a separate head of damages was first recognized in Flint vs. Lovell, (1935) 1 KB 354, in which claim for damages for loss of expectation of life was made by a living person aged 70 years, who was seriously injured as a result of negligent driving of car by the defendant. The medical evidence given in that case was that while otherwise he could have lived a happy and enjoyable life for 10 more years, as a result of injuries sustained by him in the accident, he could expect to live for not more than a year. Considering this shortened expectation of life, an award of Ł 4,000 was made. That decision was approved by the House of Lords in Rose vs. Fort, (1937) AC 826, which was a case of fatal accident. The House of Lords held in that case that "loss of expectation of life" could not be confined to the case where the injured person was alive at the date of action; but was equally admissible if the action was brought by his personal representatives. In that case a girl aged 23 years had died within 4 days of the accident during which time she had throughout remained unconscious. Their Lordships held that right to recover damages for loss of expectation of life did not depend on the person injured realising his loss and suffering in mind on that account. Thus claim for loss of expectation of life became awardable even when the deceased died without regaining consciousness. But that damages under this head are not for the prospect of length of days but for predominantly happy life and the assessment is so difficult that only moderate conventional sums were awarded under this head.

In England by the Administration of Justice Act, 1982, both the heads of damages - for loss of expectation of life and for loss of consortium have been abolished and have been replaced by a compensatory provision for award of damages on account of bereavement to the extent of Ł 3,500.

Law In India

46.1 The first upward revision of conventional amount for loss of expectation of life was done by this Court in the decision rendered on 21st August 1978 in First Appeal No.524 of 1976 which was followed in Khodabhai Bhagwanbhai vs. Hirji Tapu, 1980 ACT 237 (decided on 27.4.1979). The conventional figure was raised from Rs.3000/- to Rs.5000/- on account of the rise in prices and the fall in the purchasing power of money.

46.2 Thereafter again in Smt. Rafia Sultan vs. ONGC, 1986 ACT 6161 = 26(2) GLR 1315 decided on 1.8.1985 another Division bench of this Court raised the conventional amount of Rs.5,000/- to Rs.10,000/- in the following terms :-

> " (l)ooking to the fall of purchasing power of money over years and keeping in view the extent to which rupee has been eroded, time has come when we must revise upwards the figure of compensation awarded by way of loss to the estate. As laid down by two judgments of this Court (vide Chaturji Amarji vs. Ahmad Rahimbux, 1980 ACT 368 (Gujarat) and Khodabhai Bhagwanbhai vs. Hirji Tapu, 1980 ACT 237 (Gujarat), proper damages to be assessed on different heads have to undergo upward revision from time to time depending upon changing times and the extent of fall of purchasing power of currency. Keeping in view this fact, it must be held that compensation awardable on account of loss to the estate i.e loss of expectation of life can be upward revised and brought to the figure of Rs.10,000/- instead of the conventional figure of Rs.5,000/- which is taken as standard figure uptil now."

46.3 This figure of Rs.10,000/- as conventional amount for loss of expectation of life further came to be revised upward on 1.11.1992 in Bhanuben P Joshi vs. KB Parmar, 1993(1) GLH 260. The Division bench observed that after the above decisions the purchasing power of rupee was substantially affected. It was an admitted fact that the value of rupee was substantially eroded in

the last five years. The sky-rocketing price and the fall in value of rupee had materially affected on the consumer price index which doubled during the period between 1984-85 and 1991-92. Considering the run away inflation and substantial erosion in the value of rupee, the conventional figure of Rs.10,000/- was revised to Rs.20,000/- under the head of loss of expectation of life. This decision was also followed in Gujarat State Road Transport Corporation vs. Suryakantaben D Acharya, 2001(2) GLR 1777 and this Court observed as under :-

> “However, amount of Rs.10,000/- under the head of conventional amount for loss of expectation of life is, in our opinion, on the lower side. It is a matter of common knowledge that the conventional amount for loss of expectation of life is required to be revised, periodically, in tune with the rise in price and high rate of inflation which is very common in our country. Therefore, this amount of Rs.10,000/- awarded by the Tribunal is required to be enhanced to Rs.20,000/-.”

47. Before dealing with the decisions in Lata Wadhwa's case decided in 2001 and Nagappa's case in 2003, we may refer to the awards for conventional amounts made by the Apex Court in other decisions prior to 2005.

In Gobald Motor Service vs. RMK Veluswami, AIR 1962 SC 1 also the Apex Court explained that damages under Section 1 and damages under Section 2 of the Fatal Accidents Act, 1855 cannot be duplicated. Therefore also the amount which the deceased would have saved till his death in the normal course is not now being awarded to the estate of the deceased as such but by way of dependency benefit to the dependents of the deceased and, theefore, in Gobald's case also, the Apex Court maintained a separate award of Rs.5,000/- only for loss of expectation of life in addition to the award for loss of dependency benefit.

In N Sivammal vs. Pandian Roadways Corpn. (1985) 1 SCC 18, the Apex Court allowed only Rs.5000/- for pain and

sufferings and a further sum of Rs.5000/- as the customary figure for loss to the estate, which may be understood as being under the head loss of expectation of life.

In National Insurance Co. Ltd. vs. Swaranlata Das, 1993 Suppl.(2) SCC 743, the Apex Court observed that compensation for loss to the estate was being awarded in the range between Rs.5,000/- and Rs.10,000/- and the Court awarded Rs.7,500/- for loss to the estate and Rs.7,500/- for loss of consortium.

In General Manager, Kerala State Road Transport Corporation vs. Susamma Thomas, (1994) 2 SCC 176, the Court made "the usual award for loss of consortium and for loss of the estate each in conventional sum of Rs.15,000."

In Sarla Dixit, (1996) 3 SCC 179, the Court held that the claimants were entitled to the conventional figure of Rs.15,000/- by way of loss to the estate and loss of consortium etc.

In U.P. State Road Transport Corporation vs. Trilok Chandra, (1996) 4 SCC 362, the Court awarded compensation of Rs.10,000/- as conventional amount for loss to the estate :-

"To this figure will have to be added a conventional amount by way of loss of expectation of life. Earlier this conventional amount was pegged down to Rs.3000, but now having regard to the fall in the value of the rupee, it can be raised to a figure not more than Rs.10,000."

48. Now turning to the awards made by the Apex Court in 2005 and 2006 --

48.1 In U.P. State Road Transport Corporation vs. Krishna Bala, (2006) 6 SCC 249 the accident in question took place on 29.11.1990. The claimants filed the petition for compensation of Rs.5,12,000/- on account of death of a person aged 36 years earing

salary of Rs.2300/- per month. The widow and the children of the deceased were awarded Rs.20,000/- towards love and affection and Rs.5,000/- for funeral rights. As regards compensation for loss of dependency benefit, the Tribunal assessed the income of the deceased at Rs.2300/- per month and fixing the dependency benefit at Rs.1600/- per month and after adopting the multiplier of 22, the Tribunal computed the compensation for loss of dependency benefit at Rs.6,07,200/-. The High Court dismissed the appeal of the U.P. State Road Transport Corporation.

The Apex Court allowed the appeal of the Corporation and reduced the compensation for loss of dependency benefit by reducing the multiplier to 13 and applying it to sum of dependency benefit assessed at Rs.2000/-, the amount of compensation for loss of dependency benefit was reduced to Rs.3,12,000/-. The Court then observed that "to the aforesaid sum would be added Rs.25,000 awarded by the Claims Tribunal for deprivation of love and affection and funeral expenses ... ." No other amount was awarded under the head of conventional amount/s.

48.2. In Managing Director, Tamil Nadu State Transport Corporation vs. KI Bindu, (2005) 8 SCC 473, the accident in question took place in 2002. The Tribunal awarded Rs.8,34,784/- as compensation to the widow, children and mother of the deceased aged 34 years. In addition, the Tribunal also awarded a sum of Rs.40,000/- for pain and suffering, loss of love and affection, transportation, post-mortem and funeral expenditure. The High Court refused to interfere in appeal. In the appeal filed by the Corporation, the Apex Court reduced the amount of compensation to Rs.6,00,000/- by reducing the multiplier of 17 applied by the Tribunal to 13, but no separate amount was awarded to the claimants under any of the conventional heads such as compensation for loss to the estate and for loss of consortium.

48.3 In Tamil Nadu State Transport Corporation Ltd. vs. S. Rajapriya, (2005) 6 SCC 236 also, the heirs of the deceased aged 38 years were awarded by the Tribunal compensation of Rs.6 lakhs and odd amount. The High Court confirmed the award. The Apex Court reduced the multiplier from 16 adopted by the Tribunal to 12 and awarded compensation of Rs.4,50,000/- without awarding any separate amount under any of the conventional heads.

48.4 In Bijoy Kumar Dugar, (2006) 3 SCC 242, the Apex Court awarded only Rs.6,000/- as conventional amount for loss to the estate.

49. We may also refer to the memo of the appeal of the New India Assurance Co. Ltd. in the present appeal wherein ground (J) reads as under :-

> "(J) That the Tribunal has erred in law in awarding a sum of Rs.1,00,000/- towards conventional amount. A sum of Rs.25,000/- ought to have been awarded by the Tribunal towards conventional amount which would have been just, fair and proper."

50. The Second Schedule to the Motor Vehicles Act, 1988 inserted in the year 1994 provides for structured formula for compensation for third party fatal accident/injury case claims and in the said Schedule, the following amounts are specified as general damages in case of death in addition to the compensation outlined in the table.

(i)	Funeral expenses	Rs.2,000/-
(ii)	Loss of consortium, if beneficiary is the spouse	Rs.5,000/-
(iii)	Loss of Estate	Rs.2,500/-

51. Kemp & Kamp (Chapter 8 – Changes in the value of money) have made the following comments on the issue of revision of compensation amounts :-

> "Leaving authority aside, both principle and common sense require that the courts, when they assess an award of money, which is to be compensate a plaintiff for the damage cause to him by his injuries should take into account large and comparatively permanent changes in the real value. i.e. in the purchasing power, of money. ... ... Like can only be compared with like. To compare an award made in 1937 with an award made today, without taking into account the change in the value of money is almost as futile as comparing dollars with pounds sterling, without converting one currency into terms of the other. But the matter does not only rest on common sense and principle. There is authority for this proposition."

The learned authors have then referred to various decisions of the House of Lords stating that the Courts must take account of changes in the value of money. The authors then observed as under :-

> "Thus there is general agreement that the depreciation of the Ł ought to be taken into account. The court will not usually be concerned with detailed calculations as to the past decline of the Ł or with prognostications as to its future course. <u>It will take the change of the value of money into account in a general way</u>."
>
> (emphasis supplied)

<u>Decisions relied upon by the Tribunal</u>

52. The Tribunal has purported to rely on the decision of the Apex Court in Lata Wadhwa vs. State of Bihar, (2001) 8 SCC 197, but it was a case where a fire had broken out in the pandal at a function organized by TISCO at its premises in Jamshedpur. It was not a motor vehicle accident. The death toll in the fire reached

60. Out of them, 55 were either employees or relations of employees of TISCO. TISCO itself has a tradition that every employee can get one of his children employed in the Company. In a petition under Article 32 of the Constitution, TISCO suggested appointment of an arbitrator. A retired Chief Justice of India had made an award in the arbitration proceeding. TISCO was not only willing to pay the amount determined by the Arbitrator, but also agreed not to pursue the proceedings before the Apex Court as adversarial litigation.

The decision in Lata Wadhwa's case was thus rendered on concession in the peculiar facts of that case and in no motor vehicle accident case the Hon'ble Supreme Court or this Court has treated Lata Wadhwa's case as a precedent for assessing compensation for loss of expectation of life which is treated as loss to the estate.

53. The Tribunal has further referred to the decision of the Apex Court in MS Grewal vs. Deep Chand Sood, (2001) 8 SCC 151 wherein reliance was placed on the decision in Lata Wadhwa's case (supra). However, MS Grewal's case (supra) was also not a motor vehicle accident. The Dalhousie Public School had organized a picnic for its students on the bank of River Beas. On account of negligence of the teachers, 14 students died after being drowned in the river, A writ petition was filed in the High Court. The High Court ordered an inquiry to be conducted by the CBI and upon examination of various witnesses concluded that the death of 14 students by drowning was caused by rash and negligent acts of the teachers of the school. The High Court directed the Chairman and the management of the school to pay compensation of Rs.5 lakhs to the parents of each of the 14 students who died in the incident. The Hon'ble Supreme Court refused to interfere with the award of compensation as the High Court had considered overall situation as

regards the social placement of the students. The school was one of the most affluent schools in the country and the fee structure and other incidentals were so high that it would be a well-high impossibility to think of admission in the school at even the upper middle class level. The school catered to the need of the upper strata of the society. The Apex Court also held that the audited accounts of the school indicated that the financial stability of the school at the time of the judgment was much stronger than what it was in the year 1995 when the incident took place. Thus, it is clear that even the decision in MS Grewal's case (supra) could not have been considered as a precedent for assessing compensation in motor accident cases.

54. Still, in the instant case, the Tribunal has relied on the above judgments in Lata Wadhwa's case and MS Grewal's case for the purpose of awarding the compensation under the head of conventional amount for the loss of expectation of life at Rs.1,00,000/-. We have also been shocked to notice that the same judicial officer has assessed higher amounts under the said head in other cases where also we have been constrained to grant the stay of that part of the award.

55. We have also noticed that the Tribunal has been relying on the decision of the Apex Court in Nagappa vs. Gurudayal Singh, (2003) 2 SCC 274 quoting the paragraph -, “Past inflation – Relevancy of date of accident”. However, the said paragraph was quoted in the context of assessment of damages in injury cases, because the controversy before the Apex Court in Nagappa's case was whether fresh award could be awarded in personal injury cases, for future medical expenses which will be required to be incurred by the victim. It was in that context that, while holding that the award is final and that no fresh award could be passed in future, the Court observed that for such medical treatment, the

Court has to arrive at a reasonable estimate on the basis of the evidence brought on record. For instance, in that particular case, the victim had to get his right leg amputated and, therefore, it was contended that for replacing artificial leg every 2 to 3 years, the appellant-claimant would be required to have some sort of operation and also change of artificial leg. The Apex Court noticed that the High Court had awarded Rs.18,000/- for such estimated expenses, but no compensation was awarded for change of artificial leg every 2 to 3 years and, therefore, the Apex Court awarded Rs.1 lakh as additional compensation, periodical interest on which would be utilized for future expenses.

Compensation for Loss of Consortium

56. Before expressing any final opinion on the question of revision of the conventional amount for loss to the estate, we will also have to consider the developments regarding assessment of damages under the head of conventional amount for loss of consortium, as in some decisions both the amounts are clubbed together

57. In Fizabai vs. Nemichand, 1994 ACJ 249, the Madhya Pradesh High Court has discussed at length the concept of compensation for loss of consortium tracing the history from early 20th century and noticing that the award of damages under the separate head of loss of consortium over and above the conventional amount for loss to the estate has been consistently made by the different High Courts in India from 1968 onwards. However, the Madhya Pradesh High Court held that the award under this head (for loss of consortium) should, however, be for conventional sums between five and ten thousand rupees.

58. Having regard to the fact that the Apex Court had awarded conventional amount of Rs.15,000/- for loss to the estate

and also a separate sum of Rs.15,000/- for loss of consortium in Susamma Thomas case decided in the year 1994 (see Para 45.3 herein above), but again awarded only Rs.15,000/- as the conventional figure for loss to the estate and consortium etc. in Sarla Dixit's case decided in 1996 (Para 47 above) and that in the year 1996, the consumer price index was 1646 and also considering that in the same year in Trilok Chandra's case (Para 47 herein above), the Court awarded a sum of Rs.10,000/- as the conventional amount for loss to the estate and after considering the fact that the average consumer price index in the year 2005 was 2642 i.e. rise of about 60%, we are of the view that the compensation under the head of conventional amount for loss of expectation of life falling under the broader head of loss to the estate should be Rs.25,000/- and the compensation to be awarded to the surviving spouse under the head of conventional amount for loss of consortium should be Rs.15,000/-. We, however, make it clear that with every revision in the consumer price index, there would not be automatic frequent periodical revision of these conventional amounts at short intervals and certainly it is not for the Tribunal to undertake such revision of conventional amounts.

59. We make it clear that we are not of the view that in principle the Tribunal cannot make such revisions. The only reason for not permitting the Tribunals to undertake such revisions is that there would be no uniformity in the awards being made by the Tribunals all over the State. Even while we are of the view that the Tribunals should not ordinarily undertake such revision for the above reason, after passage of time, the Tribunals may suggest in their judgments the need for upward revision. We make it clear that these conventional amounts are determined by this Court so that henceforth all the Motor Accident Claims Tribunal in the State shall award compensation to the estate of the deceased under the head of compensation for loss of expectation of life and a separate

amount to the surviving spouse under the head of compensation for loss of consortium.

60. We also make it clear that the observations in this judgment are confined to conventional amounts in fatal cases and that as far as personal injury cases are concerned, they stand on a differing footing and we may not be treated to have expressed any opinion regarding revision of conventional amounts in personal injury cases such as compensation for pain, shock and suffering and for loss of amenities of life for different categories of injuries.

SHARE TO BE DEDUCTED FOR EXPENSES OF DECEASED

61. Coming to the question of quantum of compensation, the learned counsel for the appellant – Insurance Company submitted that after assessing the monthly income of the deceased at Rs.3,000/- as on the date of the accident, the Tribunal was required to deduct one-third share as the personal expenses of the deceased. However, the Tribunal erred in deducting only one-fifth share towards the personal expenses for the deceased. In support of the said submission, the learned counsel relied on the following decisions :-

(i) Asha vs. United India Insurance Co. Ltd., 2004 ACJ 448

(ii) Tamil Nadu State Transport Corporation Ltd. vs. S. Rajapriya, (2005) 6 SCC 236 – 2005 ACJ 1441

62. On the other hand, Ms Amrita Ajmera intervening on behalf of the claimants submitted that the Tribunal has rightly relied on the decision of a Division Bench of this Court in Gujarat State Road Transport Corporation vs. Mer Ranmal Bhima, 1997(1) GLR 325. It is submitted that the practice of deducting one-third amount as personal expenses of the deceased is more a rule of thumb than a strict rule applicable to all cases. The number of dependents which the deceased was supporting is a very important

circumstance to be considered while determining the amount which the deceased would have spent on himself and the consequent amount available for maintaining the rest of the family. While the practice of deducting one-third as personal expenses of the deceased may be adopted where the family consists of 4 to 5 persons including the deceased, in cases of larger families the issue should be left to the discretion of the Tribunal to be exercised in the facts of each case.

63. Having heard the learned counsel for the parties, we find considerable force in the submission made on behalf of the claimants. Prior to this Court laid down the principles in Gujarat State Road Transport Corpn. vs. Mer Ranmal Bhima (Deceased) through heirs reported in 1997 (1) GLR 325, the personal expenses of the deceased and the dependency amount available for the rest of the family were being worked out by following the unit method where a minor child would be treated as one unit and an adult member of the family would have two units and on that basis the amount of personal expenses of the deceased and the dependency benefit used to be worked out. It appears that in order to have expeditious decisions in motor accident cases and also to maintain uniformity, the Courts have now been adopting the rule of thumb of deducting one-third income of the deceased as the personal expenses of the deceased. Where a family consists of the deceased, his wife and two minor children, the result would the be the same whether one deducts one-third as the personal expenses of the deceased or whether one follows the unit method because the deceased would have two units, the wife also – two units and each of the two minor children – one unit each, aggregating to six units. Looking to the number of members in a nuclear family in urban areas, one-third rule should be preferred instead of counting the number of family members in each case, whether it is four members or five members and counting the number of minor

children or major children. However, where, in the case like the one under consideration, the deceased was having eight other family members over and above himself, it cannot be said that the deceased would have spent one-third of his earnings on himself, had he survived. In the facts and the circumstances of this case, we do not find any fault with the Tribunal in having deducted only one-fifth share towards personal expenses of the deceased in a family consisting of nine members including the deceased. The Tribunal, therefore, rightly held that out of the total earnings of the deceased at Rs.3,000/- per month, only one-fifth share was required to be deducted towards the personal expenses of the deceased.

MULTIPLIER

64. As regards the multiplier, Mr Mehta submitted that the highest multiplier of 18 years should be adopted only where the deceased is in the age group of 21 to 25 years and, therefore, the lower multiplier should have been adopted.

65. We find that in the Second Schedule to the Act, the multiplier of 18 is prescribed where the victim was in the age group of 25 to 30 years. In Kaushnuma Begum vs. New India Assurance Co. Ltd., (2001) 2 SCC 9 and also in the subsequent decision in MP State Electricity Board vs. Shail Kumar, (2002) 2 SCC 162, the Apex Court has held that in calculating the amount of compensation, the Court can lean itself to adopt the structured formula provided in the Second Schedule to the Act. The Apex Court held that this schedule was formulated for the purpose of Section 163A of the Act, but the Court finds it a safer guidance for arriving at the amount of compensation than any other method. Similarly in Chellamal vs. Kailasam, 2002 (11) SCC 387, applying the Second Schedule to the Act, the Court increased the multiplier from 12 to 15 in case of deceased aged 41 years. In Supe Dei & Ors. vs. National Insurance Co. Ltd. And Anr. 2002 ACJ 1166, a

three Judge Bench of the Apex Court observed that the position is well settled that the Second Schedule under Section 163A of the Act which gives the amount of compensation to be determined for the purpose of claim under the section can be taken as a guideline while determining the compensation under Section 166 of the Act.

We may also note that in Tamil Nadu State Transport Corporation Ltd. vs. S. Rajapriya, (2005) 6 SCC 236 – 2005 ACJ 1441, the Apex Court has held that the Second Schedule to the Act is only to be taken as a guideline and is not to be blindly followed.

It is necessary to remember that the Apex Court has cautioned against adopting the multiplier in the Second Schedule where the income of the deceased was of a very high amount i.e. while adopting the multiplier, the Court should also take into the multiplicant vide United India Insurance Co. Ltd. And others vs. Patricia Jean Mahajan & Ors. 2002 (6) SCC 281.

66. Having regard to the dependency benefit assessed in this case at less than Rs.40,000/- per annum and considering the age of the deceased (28 years) and also looking at the age of the widow and the minor children, we are of the view that it would be reasonable to adopt the multiplier of 18 as indicated in the Second Schedule.

67. Having considered the above controversies regarding the share required to be deducted towards personal expenses of the deceased and the multiplier to be adopted and having made general observations on those issues, we may notice that the Tribunal assessed the monthly earnings of the deceased at Rs.3000/-p.m.. Prima-facie it may appear that the Tribunal assessed the said

income as on the date of the accident and did not consider any potential increase in his earnings in future. However, it is not so because the Tribunal has certainly noticed the decision in GSRTC vs. Kamlaben, 2001 (3) GLR 2557 wherein the decisions of the Apex Court in GM, KSRTC vs. Susamma Thomas (1994) 2 SCC 176 and Sarla Dixit vs. Balvant Yadav (1996) 3 SCC 179 were followed for holding that while computing the compensation, the Court must see not only the income of the deceased at the time of his death, but the Court may arrive at notional potential income of the deceased in future after considering earning capacity of the deceased, normal expectancy of life, his education, nature of services, status of his family and estimate of the financial assistance, which he would have been expected to give to his legal representatives had he lived his normal age.

Besides, the Tribunal not only did not accept the case of the widow that the deceased was earning Rs.4000/- p.m., but specifically observed that the Tribunal did not accept and believe the oral testimony of the widow regarding monthly earnings of the deceased. The Tribunal was not even satisfied that on the date of the accident, the actual income of the deceased could be assessed at Rs.3000/- p.m.. Instead the Tribunal assessed the income at Rs.3000/- p.m. on the basis of the monthly earnings assessed by the Apex Court in Lata Wadhwa's case i.e. at Rs.3000/- p.m.. It thus appears that the Tribunal assessed the monthly income of the deceased at Rs.3000/- not as the actual income on the date of the accident but as the income for the purposes of computation of compensation for loss of dependency benefit. We, therefore proceed on the basis that the monthly income of the deceased at Rs.3,000/- assessed by the Tribunal was assessed as his future potential income. We are saying so because even if in absence of any credible evidence income of the deceased is assessed at Rs.3000/- p.m., there cannot be automatic assessment of higher

potential income in the future by applying the usual formula of 50% increase. We, therefore, hold that the Tribunal did not commit any error in assessing the income of the deceased at Rs.3000/- p.m. for the purposes of computing the compensation for loss of dependency benefit. For the reasons already indicated earlier, we also uphold the decision of the Tribunal to deduct only one-fifth amount as the personal expenses of the deceased i.e. the rest of the family members would have Rs.2400/- p.m. as the dependency benefit available to them i.e. Rs.28,800/- p.a..

68. In the result, the amount of compensation for loss of dependency benefit computed by the Tribunal at Rs.2400 X 12 = Rs.28,800 X 18 = Rs.5,18,400/- is very much within the brackets and we are not inclined to disturb the said part of the award.

INSURER'S LIABILITY

69. The last question is about the liability of the Insurance Company to satisfy the award. It was submitted by Mr Shalin Mehta for the Insurance Company that since the deceased was travelling in a tempo which was a goods vehicle, the Insurance Company cannot be held liable to satisfy the award.

70. Having heard the learned counsel for the Insurance Company and having gone through the judgment under appeal, we find that the Tribunal has given cogent reasons for holding that the deceased was not travelling in the tempo as a passenger, but he had hired the tempo for carrying the fodder which was purchased in Rajkot. This version of the claimants is amply borne out by the contents of the panchnama at Exh. 29, the relevant portion of which is quoted by the Tribunal in the judgment under appeal. Therefore, we confirm the finding that the deceased was travelling in the tempo as the owner of the goods and that the deceased was travelling with the goods in the said tempo hired by him.

DIRECTIONS FOR INVESTMENT & DISBURSEMENT

71. One particular aspect in the judgment under appeal does cause serious concern to the Court is the directions given by the Tribunal for large scale disbursement of the compensation amounts to the claimants – widowed mother and the widow and minor children of the deceased. As per the directions of the Tribunal not only cash amount of Rs.1 lakh was ordered to be paid to the mother of the deceased by an account payee cheque but 50% of the amount payable to widow of the deceased aged 27 years was ordered to be disbursed to her and even in case of six minor children, the Tribunal provided for disbursement of 20% of the amount payable to each of them. For this the Tribunal purported to rely on the decision of a learned Single Judge of this Court in Bai Damyanti Sharma, 1996 (2) GLR 418 but totally overlooked the following principles reiterated by the Apex Court in Nagappa vs. Gurudayal Singh, 2003 (2) SCC 274.

> "28. In a case of compensation for death it is appropriate that the Tribunals do keep in mind the principles enunciated by this Court in Union Carbide Corpn. vs. Union of India, (1991) 4 SCC 584 in the matter of appropriate investments to safeguard the feed from being frittered away by the beneficiaries owing to ignorance, illiteracy and susceptible to exploitation. In that case approving the judgment of the Gujarat High Court in Muljibhal Ajarambhai Harijan vs. United India Insurance Co. Ltd., 1982 (1) 23 GLR 756, the Apex Court laid down the following guidelines :-
>
> (i) The Claims Tribunal should, in the case of minors, invariably order the amount of compensation awarded to the minor be invested in long term

fixed deposits at least till the date of the minor attaining majority. The expenses incurred by the guardian or next friend may, however, be allowed to be withdrawn;

(ii) In the case of illiterate claimants also the Claims Tribunal should follow the procedure set out in (i) above, but if lump sum payment is required for effecting purchases of any movable or immovable property, such as, agricultural implements, rickshaw etc., to earn a living, the Tribunal may consider such a request after making sure that the amount is actually spent for the purpose and the demand is not a rouge to withdraw money;

(iii) In the case of semi-literate persons the Tribunal should ordinarily resort to the procedure set out at (i) above unless it is satisfied, for reasons to be stated in writing, that the whole or part of the amount is required for expanding and existing business or for purchasing some property as mentioned in (ii) above for earning his livelihood, in which case the Tribunal will ensure that the amount is invested for the purpose for which it is demanded and paid;

(iv) In the case of literate persons also the Tribunal may resort to the procedure indicated in (i) above, subject to the relaxation set out in (ii) and (iii) above, if having regard to the age, fiscal background and strata of society to which the claimant belongs and such other considerations, the Tribunal in the larger interest of the claimant and with a view to ensuring the safety of the compensation awarded to him thinks it necessary to do order;

(v) In the case of widows the Claims Tribunal should invariably follow the procedure set out in (i) above;

(vi) In personal injury cases if further treatment is necessary the Claims Tribunal on being satisfied about the same, which shall be recorded in writing, permit withdrawal of such amount as is necessary for incurring the expenses for such treatment;

(vii) In all cases in which Investment in long term fixed deposits is made it should be on condition that the

Bank- will not permit any loan or advance on the fixed deposit and interest on the amount invested is paid monthly directly to the claimant or his guardian, as the case may be;

(viii) In all cases Tribunal should grant to the claimants liberty to apply for withdrawal in case of an emergency. To meet with such a contingency, if the amount awarded is substantial, the Claims Tribunal may invest it in more than one Fixed Deposit so that if need be one such FDR can be liquidated."

"29. Further, in Lilaben Udesing Gohel vs. Oriental Insurance Co. Ltd., (1996) 3 SCC 608, the Court relied upon the said directions and further held that in Union Carbide Corporation case (1991) 4 SCC 584, this Court did not include the clause regarding literate persons' compensation and directed that it should be given the same treatment in case the Court found it necessary to do so to protect the compensation awarded to them. The Court further added one guideline as under (pp 618-19, para 17) :-

> "We must add one further guideline to the effect that when the amount is invested in a fixed deposit, the bank should invariably be directed to affix a note on the fixed deposit receipt that no loan or advance should be granted on the strength of the said FDR without the express permission of the court/tribunal which ordered the deposit. This will eliminate the practice of taking loans which may be up to 80% of the amount invested and thereby defeating the very purpose of the order. We do hope that the courts/tribunals in the country will not succumb to the temptation of permitting huge withdrawals in the hope of disposing of the claim. *We are sure that the courts/tribunals will realise their duty towards the victims of the accident so that a large part of the compensation amount is not lost to them.* The very purpose of laying down the guidelines was to ensure the safety of the amount so that the claimants do not become victims of unscrupulous persons and unethical agreements or arrangements. We do hope our anxiety to protect the claimants from exploitation by such elements will be equally shared by the courts/tribunals."
>
> [emphasis supplied]

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These principles have again been reiterated in TN State Road Transport Corpn. vs. S Rajapriya, 2005 (6) SCC 236.

72. We direct all the Claims Tribunal in the State to follow the aforesaid principles reiterated by the Apex Court in Nagappa vs. Gurudyal Singh, 2003 (2) SCC 274.

73. Before parting with the discussion, we cannot help expressing our strong disapproval of the intemperate and disrespectful language being used by the concerned Claims Tribunal in several judgments. Even while awarding interest on the compensation amount at the rate of 9% p.a. which is in consonance with the decision of the Apex Court in Kaushnuma Begum's case decided in 2001, the Tribunal has made the following observations after referring to certain decisions -

- "But L.A. for the claimants has fairly and frankly submitted during the course of arguments that though claimants are entitled to 12% interest but the Hon'ble Tribunal should award only 9% interest otherwise unnecessarily Insurance Co. would carry the matter under the appeal and in that case the entire amount of compensation would be restrained from disbursement for a indefinite period. Thus, he has fairly submitted that interest at the rate of 9% should be awarded to the claimants and accordingly I award the same."

In another matter, the same Judicial Officer, as the Presiding Officer of MACT (Aux.), Rajkot, has shown lack of sobriety and maturity by making the following observations in the judgment dated 13.6.2005 in MAC Petition No.823 of 1998.

- "So, for applying suitable multiplier, I have to consider the age of widow, minor children and the age of aged mother. But, at the same time, I can not ignore the eternal truth of nature that mother being aged about 70 years old at the time of accident, who is by now, 77 years old. Hence, <u>obviously she is on the verge of saying good-bye to the</u> <u>disgusting world.</u>

(para 13 of the judgment)

C O N C L U S I O N S

74. To sum up-

I Our conclusions, on the question of principles to be applied while deciding the question of negligence are as under :-

(i) In claim petitions under Sections 166/168 of the Motor Vehicles Act, 1988, the rule of strict liability (with exceptions thereto) as explained in Kaushnuma Begum's case (2001) 2 SCC 9 would apply where the claim petition is made for compensation for death of or injury to a pedestrian or a by-stander on the road. Here also exception (6) to the rule of strict liability permits the defendant/s to plead and prove that the accident was caused by any negligent act of the pedestrian/bystander.

(ii) In other claim petitions where the injured claimant or the deceased was not driving any motor vehicle, while the Claims Tribunal will have to hold inquiry into the question as to whether the accident in question was caused by any fault, negligence, or wrongful act of the driver/owner of the vehicle involved in the accident, it is open to the Claims Tribunal to invoke the rule of res ipsa loquitur as a rule of evidence with greater frequency than in ordinary civil suits [vide the three Judge Bench decision in Jacob Mathew vs. State of Punjab, (2005) 6 SCC 1].

(iii) Where the claim petition arises from an accident resulting from the use of two or more vehicles and the victim was a pedestrian/bystander i.e. a person not traveling in any of the motor vehicles involved in the accident, while the claimant/s would not

have to lead their evidence on account of the principle of strict liability rule, as explained in para 40 herein above, some inquiry will have to be held to find out whether the accident was caused by the sole negligence of the driver/owner of one or the other vehicle or by the composite negligence of the driver/owner of two or more vehicles involved in the accident.

II In case of fatal accidents -

(a) compensation for loss of expectation of life, which is being treated as the conventional amount for loss to the estate shall henceforth be Rs.25,000/-.

(b) compensation for loss of consortium to be awarded to the surviving spouse shall henceforth be Rs.15,000/-.

ON FACTS

III (a) As already discussed above, since the Tribunal has already found on facts that the opponent driver was responsible for the accident in question, nothing further is required to be done.

(b) As regards the amount of compensation, while we are not disturbing the award for compensation for loss of dependency benefit, we reduce the compensation awarded by the Tribunal under the head of conventional amount for loss of expectation of life to Rs.25,000/- but we also add a sum of Rs.15,000/- as compensation for loss of consortium. The amount of Rs.10,000/- awarded by the Tribunal towards funeral expenses appears to be on higher side and we award Rs.5,000/- under the said head.

(c) Accordingly, the total amount of compensation would work out as under :-

Rs. 5,18,400	For loss of dependency benefit
Rs. 25,000	Conventional amount for loss to estate
Rs. 15,000	Conventional amount for loss of consortium awarded to the widow of the deceased
Rs. 5,000	For funeral expenses
Rs.5,63,400	Total

(d) We also find that the interest awarded by the Tribunal at the rate of 9% per annum is in keeping with the decision of the Apex Court in Kaushnuma Begum vs. New India Assurance Co. Ltd., (2001) 2 SCC 9 (para 21) and also our decision dated 20.11.2006 in First Appeal No. 2590 of 2006.

IV While passing orders for investment/ disbursement of compensation amounts, the Claims Tribunal in the State shall follow the principles reiterated by the Hon'ble Supreme Court in Nagappa vs. Gurudayal Singh, (2003) 2 SCC 274 quoted in paragraph 69 of this judgment.

O R D E R

75. In the result, the appeal is partly allowed. We modify the award by reducing the amount of compensation from Rs. 6,28,400/- to Rs.5,63,400/-. The rate of interest at the rate of 9% per annum as awarded by the Tribunal is maintained. All the opponents in the claim petition including the appellant – Insurance Company are held liable to satisfy the award.

76. In view of the fact that at the time of admission of the appeal, the appellant – Insurance Company was granted interim stay on condition of depositing the entire award amount together with proportionate costs and interest and the appellant had accordingly deposited the entire award amount in April 2006, we direct the Tribunal to refund the difference between the amount payable as per the judgment of the Tribunal and the amount payable under this judgment. This shall be done within one month from the date of receipt of the writ of this Court.

77. We would also like to place on record our appreciation for the valuable assistance rendered by Mr Shalin Mehta, Mr Rajni H Mehta and Mr Palak Thakkar learned advocates for the Insurance Companies and Mr Mrugen Purohit and Ms Amrita Ajmera learned advocates intervening for the claimants.

A copy of this judgment shall be circulated to all the Motor Accident Claims Tribunals in the State.

[MOHIT S. SHAH, J.]

[AKIL KURESHI, J.]

sundar/zgs